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नई दिल्ली, शनिवार, अप्रैल 6, 1991/चैत्र 16, 1913

No. 12]

NEW DELHI, SATURDAY, APRIL 6, 1991/CHAITRA 16, 1913

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii) PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों को छोड़कर) केन्द्रीय अधिकारियों द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

भारत निर्वाचन आयोग

नई दिल्ली, 18 मार्च, 1991

आ.प्र. 60.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951
का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग
1990 की निर्वाचन अर्जी सं. 9 में उच्च न्यायालय, इलाहाबाद,
लखनऊ बेंच, लखनऊ के तारीख 15-2-91 के निर्णय को एतद्-
द्वारा प्रकाशित करता है।

(निर्णय अंग्रेजी में छपा है)

[सं. 82/उ.प्र.-लो.स./9/90(लख)]

ELECTION COMMISSION OF INDIA

New Delhi, the 18th March, 1991

O.N. 60.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the judgement of the

High Court of Allahabad, Lucknow Bench, Lucknow dated
15th February, 1991 in Election Petition No. 9 of 1990.

[No. 82/UP-HP/9/90 (LKN)]

COURT NO. 2

C. M. Application No. 106(E) of 1990

IN RE :

Election Petition No. 9 of 1990

Rana Vir Singh

.. Petitioner.

VERSUS

Rudra Sen Chaudhari & 4 others

... Respondents.

Hon'ble S. Saghir Ahmad, J.

The petitioner by means of the present petition filed under the provisions of the Representation of People Act (hereinafter referred to as the Act) has challenged the election of respondent No. 1 as Member of Parliament from 30, Kaiserganj Parliamentary Constituency in the general elections held on 22nd November, 1989 of which the result was declared on 27th November, 1989 and the petitioner who was one of the contesting candidates, lost the election.

The election has been questioned on several grounds including the ground relating to the commission of various corrupt practices contemplate by section 123 of the Act.

By order dated 13th February, 1990 notices of this election petition were required to be issued to the respondents and one of them, namely, respondent No. 1, put in appearance in this court on 11th April, 1990. Subsequently on 16th May, 1990, he filed the present application, namely, Civil Misc. Application No. 106(E) of 1990 under section 86 read with section 81(3) of the Act for dismissing the Election Petition for non-compliance of the mandatory requirement of supplying a true copy of the election petition envisaged by section 81(3) of the Act.

It has been set out in the application that a copy of the election petition was served on the respondent No. 1 by registered post while another copy was received by the clerk of the counsel on 2nd May, 1990 and in both the copies the words "and compelled the voters to cast their votes on religious feelings" added by hand in paragraph 45(V) in the original election petition, have not been added. Respondent No. 1 made a further prayer in the application that during the pendency of the application, the copies of the election petition served upon him and which he had filed back in the court with the said application, may be kept in a sealed cover. By order dated 16th May, 1990, both the copies of the election petition were directed to be kept in a sealed cover.

In spite of time having been allowed to the petitioner several times, objections to this application have not been filed.

The sealed cover has been opened in the presence of the counsel for the parties today. Both the copies of the election petition contained in sealed cover have been placed before me. Every page of the aforesaid copies has been signed today by the Bench Secretary (Sri Samsam Ali) so that these copies are not mixed up with the other copies of the petition on the record. I have looked into the copies and have also seen the main petition.

The words "and compelled the voters to cast their votes on religious feelings" are found added by hand in paragraph 45(V) of the original petition but these words have not been added in either of the copies of the petition.

The petitioner, it would be noticed, had challenged the election of respondent No. 1 on the ground, inter alia, that he alongwith his workers and supporters had visited the houses of most of the Hindu voters with a brick in his hand and aroused the religious feelings of Hindus by indicating that the said brick was a sacred brick which was proposed to be used in the Ram Janambhoomi Mandir at Ayodhya. This ground has been further stated in other paragraphs of the petition and it has been pleaded that the respondent aroused the religious sentiments and influenced the mind of the Hindu voters and compelled them to cast votes by exercising undue influence and coercion.

In para 45 of the petition in which reasons have been set out for treating the election of respondent No. 1 as illegal and void, the aforesaid words, namely, "compelled the voters to cast their votes on religious feelings" were added in clause (V) by hand but, as pointed out earlier, those words were not added in the copies served on respondent No. 1.

Clause (V) of para 45 relates to the ground of corrupt practice of arousing religious feelings and spreading communal hatred which is a corrupt practice covered by section 123(3A) while compelling a voter to cast his vote on religious feelings would be a corrupt practice of undue influence contemplated by section 123(2) of the Act inasmuch as the compulsion pleaded by the petitioner would amount to an interference in the free exercise of the electoral right which would also include the right to vote. It would thus be apparent that in Clause (V) there was also a ground relating to the corrupt practice of undue influence pleaded by the petitioner.

The omission of the aforesaid words, therefore, constitute a material omission in the copy of the petition inasmuch as the ground relating to the nature of corrupt practices pleaded in the original petition cannot be said to have been indicated in para 45(V) of the copies of the election petition served on the respondent No. 1. Learned counsel for the petitioner, on whose behalf objections to this application have not been filed, does not dispute this position.

Section 81(3) of the Act provides that every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the election petition. Section 86 of the Act provides for the consequences of not complying with the provisions of section 81. It requires a court to dismiss an election petition which does not comply with the provisions of section 81, 82 or section 117 of the Act.

Since I have found above that the copies of the election petition served on respondent No. 1 were not the true copies of the election petition, it cannot be said that the petitioner has complied with the requirements of section 81(3). Consequently, in obedience to the mandate contained in section 86 of the Act, the petition is to be dismissed.

Civil Misc. Application No. 106(E) of 1990 is, therefore, allowed and the election petition is dismissed with costs at the threshold under section 86 for non-compliance of the requirements of section 81(3) of the Act.

Sd/-

S. Saghir Ahmad.
15-2-1991.

आ.प्र. 61.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1990 की निर्वाचन अर्जी सं. 4 में उच्च न्यायालय, इलाहाबाद लखनऊ बेंच, लखनऊ तारीख 7-2-91 से निर्णय को एतद्वारा प्रकाशित करता है।

(निर्णय अंग्रेजी में छपा है)

[सं. 82/उ.प्र.-लो सं./१/90(लख)]

आदेश से,

एल. एच. फारुकी, अवसर सचिव

O.N. 61.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement of the High Court of Allahabad, Lucknow Bench, Lucknow dated 7-2-1991 in Election Petition No. 4 of 1990.

[No. 82[UP-HP]4[90(LKN)]

L. H. FARQI, Under Secy.

Civil Misc. Application No. 7(E) of 1990
Civil Misc. Application No. 33(E) of 1990
Civil Misc. Application No. 34(E) of 1990
Civil Misc. Application No. 36(E) of 1990
Civil Misc. Application No. 47(E) of 1990
Civil Misc. Application No. 89(E) of 1990
Civil Misc. Application No. 112(E) of 1990
Civil Misc. Application No. 113(E) of 1990
Civil Misc. Application No. 114(E) of 1990
Civil Misc. Application No. 151(E) of 1990
Civil Misc. Application No. 21(E) of 1991

In re :

ELECTION PETITION NO. 4 OF 1990

Raj Mohan Gandhi

...Petitioner

VERSUS

Sri Rajiv Gandhi

...Respondent

Hon'ble S. Saghir Ahmad, J.

Election of the respondent, Sri Rajiv Gandhi, as a Member of Parliament from 25-Amethi Parliamentary Constituency in the General Election held in 1989, has been challenged by means of present petition by Shri Raj Mohan Gandhi who was one of the contesting candidates and who ultimately like other contesting candidates, lost the election.

The election has been challenged on a number of grounds, including the grounds relating to the commission of the

corrupt practices of booth capturing, undue influence, bribery, use of National Symbols, incurring election expenses in excess of the limit prescribed under section 77 of the Representation of People Act (hereinafter called the Act) and obtaining or procuring the assistance of persons in the service of the government for the furtherance of the prospects of the election as also on the ground that in the conduct of the election, the provisions of the Constitution, the Act and the Rules made thereunder were violated.

The petition came for orders before me on 12-2-1990. On that date one Sri Kasturi Lal filed an application for being implicated in the election petition. The application was directed to come up the next day i.e. on 13-2-1990 when the notice of this application was required to be issued to the respondent, notice on behalf of the petitioner having already been taken by Sri I. B. Singh. Notices were also directed to be issued to the respondent of the election petition but immediately thereafter Sri S. C. Maheshwari put in appearance on behalf of the respondent with a request that he may be allowed time to file the written statement which was allowed. The case was fixed for 15-3-1990.

The application of Sri Kasturi Lal has since been registered as Civil Misc. Application No. 7(E) of 1990 and in the first of the series of the applications which poured in subsequently. The petitioner as also the respondent have both filed objections to this application which have been registered separately as Civil Misc. Application No. 33(E) of 1990 and Civil Misc. Application No. 34(E) of 1990.

On 15-3-1990, respondent filed Civil Misc. Application No. 36(E) of 1990 under order 6 rule 16, order 7 rule 11 and Section 151 of the code of Civil Procedure read with Sections 86 and 87 of the Act with the following prayer :—

- (a) Strike off paragraphs 3 to 6, 8, 32, 34 to 49 and 51 to 81 of the Election petition;
- (b) dismiss/reject the election petition as not disclosing the cause of action;
- (c) award cost in favour of the respondent; and
- (d) pass such other and further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

It was in this application that a plea was raised in paragraph 4 thereof that the petition was also bad for non-compliance of section 81(3) and 83(1)(c) and (2) of the Act.

Civil Misc. Application No. 47(E) of 1990 dated 26-3-1990 has been filed by the petitioner in reply to the above application of the respondent.

During the course of the arguments on Civil Misc. Application No. 36(E) of 1990 including on the plea that an incomplete copy of the election petition was supplied to the respondent, an objection was raised that since there was no prayer made in Civil Misc. Application No. 36(E) of 1990 for dismissing the election petition for non-compliance of Section 81(3), such a plea could not be raised, and that too, orally. It was then that a fresh application was filed on behalf of the respondent for dismissing the petition for non-compliance of Section 81(3) of the Act. This has been registered as Civil Misc. Application No. 89(E) of 1990. It is dated 8-5-1990 Civil Misc. Application No. 112(E) of 1990 dated 15-5-1990 is the reply of the petitioner to Civil Misc. Application No. 89(E) of 1990. Civil Misc. Application No. 113(E) of 1990 dated 17-5-1990 is an application by the respondent by way of replication to petitioner's reply contained in Civil Misc. application No. 112(E) of 1990. In his replication, the respondent has specified in number of additional documents with the assertion that copies of those documents should also have been supplied to him as part of the election petition.

Civil Misc. Application No. 114(E) of 1990 dated 22-5-1990 is the petitioner's reply to C.M. application No. 113(E) of 1990.

The contention raised on behalf of the respondent is that the documents referred to in the petition are the integral part of the petition and, therefore, their copies should have

been supplied to the respondent as part of the petition. Since this was not done and copies of these documents were not supplied to the respondent as part of the petition, the election petition itself, it is further contended, is liable to be dismissed at the threshold under section 86 of the Act for not complying with the mandatory requirement of section 81(3).

This is disputed by the counsel opposite, Sri M. G. Ramachandran, who contends that the documents in respect of which the respondent has raised the grievance of non supply of the copies cannot be legally treated as part of the petition inasmuch as they have been referred to in the petition as the contents of some of the documents have been indicated in the petition itself where the rest of the documents are not intended to be read as part of the petitioner's pleadings relating to corrupt practices alleged against the respondent.

The documents in respect of which the petitioner has raised the grievance of non-supply of their copies are specified in two applications namely Civil Misc. Application No. 89(E) of 1990 and Civil Misc. application No. 113(E) of 1990 filed by the respondent. They are :—

- (a) Documents specified in Civil Misc. Application 89(E) of 1990.
 - (i) video cassette containing the speech of the respondent made by him on 6.11.1989 (See para 36j of the petition).
 - (ii) Copy of the poster referred to in para 76b of the petition.
 - (iii) Copy of the video film referred to in para 72 of the petition.
- (b) Documents specified in Civil Misc. Application No. 113(E) of 1990.
 - (i) the copy of the video cassette containing the alleged speech of the answering respondent allegedly made by him on 6-11-89 at Amethi referred to in para 36(g) (h) and (j) and para 8(iv) of the petition; and
 - (ii) non-furnishing the copy of the map poster and magazine 'Varnika' referred to in sub-paragraph (a), (b), (c) respectively in paragraph 76 of the petition read with para 80(a) and (b); and
 - (iii) non-furnishing the copy of the alleged video film in paragraph 72(a)(iii) and (iv) and sub-para (b) of the same paragraph, and
 - (iv) Copy of alleged complaint by Yashwant Singh referred to in para 8(vi) and para 36(1); and
 - (v) Copy of representation to President referred to in para 21 and 22; and
 - (vi) Copy of complaint referred to in paras 35(b), (c) and (d); and
 - (vii) Copy of Memorandum and Telegram referred in para 38(c); and
 - (viii) Copies of complaint referred to in paras 39(c) and 40(d); and
 - (ix) Copy of photograph and written statement referred in para 49(c); and
 - (x) Copy of written complaint referred to in para 60(1) and (n); and
 - (xi) Copy of report referred to in para 65 (i) and (ii); and
 - (xii) Copy of representation referred to in para 65 (iv) as well as written complaint in para 65(vii) and copy of newspaper report referred to in para 65(ix); and
 - (xiii) Copy of complaint referred to in para 79 along-with the copy of Election Petition is non-compliance of Section 81(3) and as such the Election Petition is liable to be dismissed under section 81 of the Act.

All the three documents mentioned in Civil Misc. application No. 89(E) of 1990 have been repeated in Civil Misc. application No. 113(E) of 1990.

Before proceeding to consider the question whether or not the respondent was entitled to get the copies of the documents as part of the petition, I would first consider the relevant statutory provisions.

Section 81 of the Act provides as under :—

81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in sub-section (1) of Section 100 and Section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation.—In this sub-section "elector" means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2) Deleted by Act 47 of 1966 w.e.f. 14-12-1966.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

As to what an Election Petition should contain is provided by Section 83 as under :—

"83. Contents of petition.—(1) An election petition :—

- (a) shall contain a concise statement of the material facts on which the petitioner relies,
- (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and
- (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings :

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

The consequence of non-compliance with Section 81 is indicated in Section 86, relevant portion of which, is quoted below :—

"86. Trial of election petitions.—(1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117.

Explanation.—An order of the High Court dismissing an election petition under this sub-section shall be deemed to be an order made under clause (a) of Section 98."

The statutory provisions quoted above indicate that on the filing of an election petition the petitioner has, also, simultaneously, to file as many copies of the petition as there are respondents arrayed in the petition and each copy has to be attested by the petitioner under his own signature to be true copy of the petition.

Copy of the petition contemplated by Section 81(3) means complete copy including any schedule or annexure to the petition (if it is part of the petition) indicate in section 83(2) of the Act.

With regard to schedule and annexure, the Supreme Court itself in its decision in *Sahodra Bai Rai Vs. Ram Singh Aharwar* A.I.R. 1968 S.C. 1079 has held as under :—

"Similarly, details of the averments too compendious for being included in the election petition may be set out in the schedules or annexures to the election petition. The law then requires that even though they are outside the election petition, they must be signed and verified, but such annexures or schedules are then treated as integrated with the election petition and copies of them must be served on the respondents if the requirement regarding service of the election petition is to be wholly complied with".

In *M. Karunanidhi Vs. H. V. Handa* A.I.R. 1983 S.C. 558 however, the Supreme Court emphatically observed that the words "copies thereof" in sub-section (3) of Section 81 read in the context of sub-section (2) of Section 83 must necessarily refer not only to the Election Petition proper but also to schedules or annexures thereto containing particulars of any corrupt practice alleged therein.

The question as to when can a document be treated as an integral part of the petition has been considered by the Supreme Court itself in several cases and in order to understand the true legal position, one has to study those decisions the first of which was rendered in 1968 in the Case of *Smt. Sahodra Bai Rai Vs. Ram Singh Aharwar and others* A.I.R. 1968 S.C. 1079 in which the following facts were noticed by the Supreme Court :—

"(2) The appellant was a candidate for election to the Sagar Lok Sabha Scheduled Castes constituency No. 24. The election took place on February 20, 1967. There were three other contesting candidates of whom the first respondent secured the largest number of votes and was declared elected. The appellant secured the second largest number of votes, her votes being less by just under 300 than the successful candidate's votes. At election petition was thereafter filed by the appellant on April 5, 1967. In this election petition the appellant challenged the election petition of the first respondent on four grounds. They were (a) wrongful acceptance of his nomination paper, (b) corrupt practice inasmuch as he appealed to religion through a pamphlet marked Annexure 'A' (c) under influence, and (d) breaches of the Act and Rules. The pamphlet to which reference is made was styled *Bhayankar Vajraghat* and was published by *Sarvadaliya Goraksha Mahabhiyan Samiti, Deori Kalan Branch*. It charged the party of the appellee namely the Congress with encouraging cow slaughter and offending the Hindu Sentiment. Details were given in it of the number of animals slaughtered every day in Madhya Pradesh and elsewhere and blamed the Congress with being a party to the practice. In the body of the election petition a translation in English of the Hindi pamphlet was incorporated. The original pamphlet was attached to the election petition and was marked 'A'. The election petitioner proceeded to say in her petition "it forms part of the petition". (3) When parties appeared the first respondent filed his written statement in great detail. He dealt with this pamphlet and answered the allegations of the election petitioner in relation thereto paragraph by paragraph. As a result of these pleas a number of issues were raised on July 18, 1967. No issue was raised in regard to the service of a defective copy of the election petition, upon the respondents in general and the first respondent in particular. However, on August 3, 1967, a special objection was made by the first respondent claiming that the copy of the pamphlet had not been annexed to the copy of the election petition served upon him and therefore the election petition was liable to be dismissed in accordance with the provisions of Section 86 of the Representation of the People Act. A detailed reply to this objection was given by the election petitioner. She stated that this was an after-thought inasmuch as the translation of the pamphlet was incorporated

in the election petition and the allegations regarding the pamphlet had been answered in detail by the answering respondent. The Court thereupon framed an additional issue on August 4, 1967. The issue ran as follows :

"Whether the election petition is liable to be dismissed for contravention of S.81(3) of the Representation of the People Act 1951 as copy of Annexure A to the petition was not given along with the petition for being served on the respondents?"

(4)

(5) The learned Judge, on an appraisal of this material held that the copies of the election petition served upon the respondents were not accompanied by the pamphlet which was an Annexure to the election petition. After examining the law on the subject the learned Judge came to the conclusion that the election petition should be dismissed under S.86 of the Representation of the People Act and he accordingly dismissed it with costs. No other issue which was struck between the parties was gone into because the election petition failed at the very threshold."

The Supreme Court thereafter analysed the provisions of the Code of Civil Procedure and observed that even under the Code of Civil Procedure a copy of the plaint alone, and not copy of any document filed with the plaint, except in cases of suits filed under the Negotiable Instruments Act where a copy of the Negotiable instrument was to accompany the plaint for service on the defendant, is required to be served on the defendant. The Supreme Court then proceeded to consider the various provisions of the Act and held that copy of any document filed with the Election Petition, as evidence in the case, is not required to be filed with the petition for service on the respondents in that petition.

The Supreme Court observed :—

"It is contended that since the pamphlet was an annexure to the petition it was not only necessary to sign and verify it, but that it should have been treated as a part of the election petition itself and a copy served upon the respondents. In this way, non compliance with the provisions of section 80(1) is made out. In our opinion, this is too strict a reading of the provisions. We have already pointed out that Section 81(3) speaks only of the election petition. Pausing here, we would say that since the election petition itself reproduced the whole of the pamphlet in a translation in English, it could be said that the averments with regard to the pamphlet were themselves a part of the petition and therefore the pamphlet was served upon the respondents although in a translation and not in original. Even if this be not the case we are quite clear that sub-section (2) of Section 83 has reference not to a document which is produced as evidence of the averments of the election petition but to averments of the election petition which are put in not in the election petition but in the accompanying schedules or annexures. We can give quite a number of examples from which it would be apparent that many of the averments of the election petition are capable of being put in schedules or annexures. For example, the details of the corrupt practice there in the former days used to be set out separately in the schedules and which may, in some cases be so done even after the amendment of the present law. Similarly, details of the averments too compendious for being included in the election petition may be set out in the schedules or annexures to the election petition. The law then requires that even though they are outside the election petition, they must be signed and verified, but such annexures for schedules are then treated as integrated with the election petition and copies of them must be served on the respondents if the requirement regarding service of the election petition is to be wholly complied with. But what we have said here does not apply to documents which are merely evidence in the case but which for reasons of clarity

and to lend force to the petition are not kept back but produced or filed with the election petitions. They are in no sense an integral part of the averments of the petition but are only evidence of those averments and in proof thereof. The pamphlet therefore must be treated as a document and not as a part of the election petition in so far as averments are concerned."

This decision was distinguished by the Supreme Court in *U.S. Sasidharan Vs. K. Karuna Karan* A.I.R. 1990 S.C. 924--1989 (4) SCC 482 in the following words:—

"23. Much reliance has been placed on behalf of the appellant on a decision of this court in *Sahodrabai Rai Vs. Ram Singh Aharwar*. In that case, the appellant filed an election petition challenging the election of the first respondent on four grounds, one of which was corrupt practice inasmuch as the first respondent had appealed to religion through a pamphlet marked Annexure A. In the body of the election petition a translation in English of the Hindi pamphlet was incorporated. The original pamphlet was attached to the election petition and was marked Annexure A. The election petitioner, thereafter, stated in the petition that the pamphlet formed part of the petition. The first respondent raised an objection that a copy of the pamphlet had not been annexed to the copy of the election petition served on him and, therefore, the election petition was liable to be dismissed under Section 86 of the Act. The High Court accepted the objection and dismissed the election petition. On an appeal to this Court by the appellant, this Court set aside the judgment of the High Court holding that the pamphlet must be treated as a document and not as a part of the election petition insofar as the averments were concerned.

24. The decision in *Sahodrabai* case does not, in our opinion, lend any assistance to the contention of the appellant that the video cassette is only evidence and does not form part of the election petition. In that case, the election petition reproduced the whole of the pamphlet and, accordingly, it was held that it was only an evidence and not a part of the election petition. What has been stressed in that case is that each and every document does not form part of the election petition. Moreover, the court was considering the scope of Section 83(2) of the Act before it was amended. We are unable to accept the contention made on behalf of the appellant that a document, in no circumstances, can form an integral part of the election petition. As has been noticed already, the pamphlet in that case was fully reproduced in the election petition and, therefore, it was merely an evidence and did not form a part of the election petition."

I will revert to *Sasidharan's* case a little later in the meantime. I may consider another S.C. decision in *Thakur Virendra Singh Vs. Vimal Kumar* 1977 (1) S.C. 718-A.I.R. 1976 S.C. 2169 in which the election of the returned candidate was challenged on a number of grounds including the ground relating to the commission of corrupt practices which was contained in paragraph 13 and other paragraphs of that petition Para 13(xii) of that petition contained the following averments:—

"(13) (xii). That respondent Election Agent got printed and distributed a leaflet entitled :

"Beware, understand the Congress Candidate." (Leaflet is attached hereto and marked as Annexure A).

(13) (xiii). That the leaflet Annexure 'A' contains the following statement of facts which are false which the respondent either believed to be false or did not believe to be true in relation to the personal character and/or conduct of the Congress Candidate, being the statements reasonably calculated to prejudice the prospects of Congress candidate election;

".....What to speak of other things Rajendra Jain went on tour to those countries where beef is not pared and served in Hotels and then he took beef even. Do you want to cast your vote in favour of a person who is atheist, who is a beef eater and is devoid of Dharam....."

It was contended that since copy of the leaflet Annexure A referred to above was not served on the respondent, the petition was liable to be dismissed but the S.C., negatived the contention. It observed as under :—

"He has further urged that the petition was also liable to be dismissed as the copy of the petition meant to be served on the appellant was not accompanied by a copy of Annexure 'A' i.e. Ext. P-10. We find ourselves unable to accede to these contentions. The allegations of corrupt practice and particulars thereof as given in paragraph 13 of the election petition reproduced above are sufficiently clear and precise. The affidavit accompanying the petition in support of the allegations of corrupt practice and the particulars thereof also conform to the form prescribed for the purpose. The appellant had an easy access to the court record and could have no difficulty in gathering the necessary material to meet the case set up by the respondent by a reference to the leaflet (Ext. P-10) which formed an annexure to the election petition."

The next decision on the point is the decision in *M. Karunanidhi Vs. H. V. Handa* A.I.R. 1983 S.C. 588—1983(2) S.C.C. 473 in which the Election petition was filed on the grounds, inter alia, that the returned candidate had committed the corrupt practice specified in sub-section (6) of Section 123 of incurring or authorising expenditure in contravention of Section 77 of the Act and that many of the items of expenditure had not been included by him in the return of election expenses filed by him. One such item related to an expenditure of Rs. 50,000 in erecting atleast fifty fancy banners being not less than Rs. 1000. A photograph of one such banner was filed by the petitioner but the copy of the photograph was not annexed to the copy of the petition furnished to the returned candidate.

On a plea raised by the returned candidate for the dismissal of the Election Petition on account of the non-supply of the copy of the photograph to him as part of the Election Petition, the S.C. reversing the judgment of the High Court held :—

"41. It is obvious that the photograph was a part of the averment contained in paragraph 18(b). In the absence of the photograph the averment contained in paragraph 18(b) would be incomplete. The photograph referred to in paragraph 18(b) was therefore an integral part of the election petition. It follows that there was total non-compliance with the requirements of sub-section (3) of Section 81 of the Act by failure to serve the appellant with a copy of the election petition. In *Ch. Subbarao's* case (A.I.R. 1964 S.C. 1027), supra, the Court held that if there is a total and complete non-compliance with the provisions of sub-section (3) of Section 81, the election petition could not be treated as "election petition presented in accordance with the provisions of this Part" within the meaning of Section 80 of the Act. Merely alleging that the appellant had put up fancy banners would be of no avail unless there was a description of the banner itself together with the slogan.

42. The conclusion is irresistible that the words "copies thereof" in sub-sec. (3) of Section 81 reads in the context of sub-section (2) of Section 83 must necessarily refer not only to the election petition proper but also to schedules or annexures thereto containing particulars of any corrupt practice alleged therein. That being so, we are constrained to reverse the judgment of the High Court insofar as it holds that the photograph of the fancy banner adverted to in paragraph 18(b) could not be

treated to be integral part of the election petition but was merely a piece of evidence as to the nature and type of fancy banner erected by the appellant and therefore failure to supply a copy of the photograph to the appellant did not amount to a violation of the provisions of sub-section (3) of Section 81 of the Act."

The above decision in *Karunanidhi's* case was referred to and approved by the S. C. in *Mithilesh Kumar Pandey Vs. Baidya Nath Yadav* A.I.R. 1984 (2) SCC1.

The question again came to be considered by the Supreme Court in *A. Madan Mohan Vs. Kalava Kunta Chandra Shekhara* A.I.R. 1984 S.C. 871=1984 (2) SCC 288 and the Supreme Court, relying upon its earlier decision in *Sahodra Bai Rai Vs. Ram Singh Aharwar* A.I.R. 1968 SC 1079, held that the petitioner who had complied with all the statutory requirements in filing the Election Petition was under no obligation to supply copies of the documents or annexures to the election petition to the respondent filed as evidence in the case. It observed in para 10 as under :—

"10. The counsel for the petitioner vehemently contended that as the schedules and other documents formed an integral part of the petition, the same should have been served on the petitioner (respondent in the High Court) before it could be said that the provisions of Sections 81 and 82 of the Act had been complied with. It was further argued that in the absence of such a compliance, the petition was liable to be rejected in limine under Section 86 of the Act. We are, however, unable to agree with this contention which does not at all flow from the plain and simple requirements of Sections 81 and 82. As indicated above, all that was necessary was done in this case and there was requirement that the documents or the schedules should also have been served on the petitioner because if they were filed in the Court it was always open to the petitioner to inspect them and find out the allegations made in the petition. We are unable to hold that the documents or the schedules formed an integral part of the petition.

In paragraph 11 of the report, the portion of the judgment in *Sahodrabai's* case (supra) has been reproduced. The S.C. thereafter proceeds to say as under :—

"12. It is well settled principle of interpretation of statute that wherever a statute contains stringent provisions they must be literally and strictly construed so as to promote the object of the Act. As extracted above, this Court clearly held that if the arguments of the appellant (in that case) were to be accepted, it would be stretching and straining the language of Sections 81 and 82 and we are in complete agreement with the view taken by this Court which has decided the issue once for all.

13. The learned counsel relied on a later decision of this Court in the case of *M. Karunanidhi Vs. H. V. Hande* (1983) 2 SCC 473 : (AIR 1983 SC 558) where a Division Bench while considering a similar question made the following observations :—

"The preliminary issue and the appeal turn on a short point of construction. The question that arises is whether the words "copies thereof" in sub-section (3) of Section 81 comprehend the election petition proper or do they also include a schedule or annexure in terms of sub-section (2) of Section 83 or merely a document only in proof of the allegations in paragraph 18(b) must turn on a construction of sub-section (3) of Section 81 read with sub-section (2) of Section 83. It now appears to be well settled by *Sahodrabai's* case, [1968 (33) SCR 13]; (AIR 1968 SC 1079) that sub-section (2) of section 83 applies only to a schedule or annexure which is an integral part of the election petition and not to a document which is produced as evidence of the averments of the election petition."

The decision in Karuna Nidhi's case (supra) was cited before it but was distinguished on facts with the following observations :—

- "14. This decision in no way departs from the ratio laid down in Sahodrabai's case (supra). The aforesaid case, however, rested on the ground that the document (pamphlet) was expressly referred to in the election petition and thus became an integral part of the same and ought to have been served on the respondent. It is, therefore, manifest that the facts of the case cited above are clearly distinguishable from the facts of the present case. Furthermore, the decision in M. Karunanidhi's case (supra) has noticed the previous decision and has fully endorsed the same"

All the aforesaid decisions came to be considered by the Supreme Court in U. S. Sasidharan Vs. Karuna Karan and other A.I.R. 1990 S. C. 924=1989 (4) SCC 482, in which the following facts were involved :—

- "3. The appellant challenged the election of the first respondent to the Kerala Legislative Assembly on the ground of various corrupt practices alleged to have been committed by the first respondent. In paragraphs 5(i) and 5(ii) of the election petition, the corrupt practice that was alleged by the appellant was to the effect that the second respondent, who was a candidate for the election, published a notice wherein it was declared that the second respondent was withdrawing from the contest and stated, *inter alia*, that it was to highlight the grievances of his community, namely, the Kudumbi Samudayam which is a backward community, that he had decided to contest the election, and that one of the demands of the community was that it should be included in the list of Scheduled Castes. Further, the second respondent stated in the notice that the Kerala Government under the leadership of the first respondent had decided to give favourable consideration in regard to his community's demand for inclusion in the list of Scheduled Castes. Accordingly, the second respondent declared in the notice that for obtaining their rights, it had become necessary that the first respondent should win in the election and for that purpose he was withdrawing his candidature offering full support to the first respondent. It was alleged that the second respondent published the notice at the instigation and with the assistance and initiative and at the cost of the first respondent and his supporters. Such acts constituted corrupt practice within the meaning of Section 123 of the Act.

4. In paragraph 5(xvii) it is alleged that the first respondent also committed corrupt practice in the course of his election work by asking government servants including Shri P. M. Shahul Hameed, Teacher Government Upper Primary School, Kodunpassery, to lead processions in support of his candidature in the constituency. It was submitted by the appellant that he was prepared to prove the allegation by examining the said persons. A photograph of a procession was filed.

5. In paragraph 5(vi) of the election petition, the appellant *inter alia* stated as follows :—

- 5(xi) Besides at the instigation of the first respondent a video cassette called "Malayide Purovathi" has been used in the constituency. The persons who took are 1. Shri Jose P. George, Government Pleader, Kerala High Court, and 2. Shri Thomas Thottannally, Veterinary Doctor, Veterinary Polyclinic Valivarambu. This is also a corrupt practice. The video cassette is produced herewith in a sealed cover.

6. The first respondent opposed the election petition by filing a written statement denying the allegations of corrupt

practices. It was submitted by him that as the copies of the said notice, photograph and video cassette were not supplied to the first respondent along with the copy of the election petition, the election petition was liable to be dismissed in limine under Section 86(1) for non-compliance with Section 81(3) of the Act."

Accepting the contention of the respondent in that case, the H. C. dismissed the Election Petition which was noticed by the SC in the following words :—

- "7. The High Court came to the findings that the allegations in the election petition would really show that the said documents formed integral part of the election petition and, therefore, it was really necessary to serve copies of the same on the first respondent and overruled the contention of the appellant that as he had filed the documents and produced the video cassette in court, the first respondent could very well take copies of the same and defend his case. The High Court took the view that non-furnishing to the first respondent copies of the documents alongwith a copy of the election petition was non-compliance with Section 81(3) and, as such, the election petition was non-compliance with Section 81(3) and; as such the election petition was liable to be dismissed the election petition. Hence this appeal.

The legal position has been spelled out by SC in the following words :—

- "14. It has been already noticed that the High Court dismissed the election petition as the appellant has not furnished to the first respondent copies of the notice, photograph and the video cassette referred to above along with a copy of the election petition. So far as the copies of the notice and the photograph are concerned, we do not think that the High Court was justified in holding that these should have also been furnished to the first respondent alongwith the copy of the election petition. Dr. Chitale, learned counsel appearing on behalf of the first respondent, also has not urged that the copies of these two documents should have been served upon the first respondent. What has, however, been vehemently urged on behalf of the first respondent is that he should have been served also with the election petition a copy of the video cassette. This contention will be considered presently.

15. We have already referred to Section 83 relating to the contents of an election petition. The election petition shall contain a concise statement of material facts and also set forth full particulars of any corrupt practice. The material facts or particulars relating to any corrupt practice may be contained in a document and the election petitioner, without pleading the material facts or particulars of corrupt practice may refer to the document. When such a reference is made in the election petition, a copy of the document must be supplied inasmuch as by making a reference to the document and without pleading its contents in the election petition, the document becomes incorporated in the election petition by reference. In other words, it forms an integral part of the election petition. Section 81(3) provides for giving a true copy of the election petition. When a document forms an integral part of the election petition and a copy of such document is not furnished to the respondent along with a copy of the election petition, the copy of the election petition will not be a true copy within the meaning of Section 81(3) and, as such, the court has to dismiss the election petition under Section 86(1) for non-compliance with Section 81(3).

16. On the other hand, if the contents of the document in question are pleaded in the election petition. In such a case, a copy of the document need not be

served on the respondent and that will not be non-compliance with the provision of Section 81(3). The document may be relied upon as an evidence in the proceedings. In other words, when the document does not form an integral part of the election petition, but has been either referred to in the petition or filed in the proceedings as evidence of any fact, a copy of such a document need not be served on the respondent along with a copy of the election petition.

17. There may be another situation when a copy of the document need not be served on the respondent along with the election petition. When a document has been filed in the proceedings, but is not referred to in the petition either directly or indirectly, a copy of such document need not be served on the respondent. What Section 81(3) enjoins is that a true copy of the election petition has to be served on the respondents including the elected candidate. When a document forms an integral part of an election petition containing material facts of particulars of corrupt practice, then a copy of the election petition without such a document is not complete and cannot be said to be a true copy of the election petition. Copy of such document must be served on the respondents.

After laying down the above legal principles the S. C. proceeded to consider whether the Video cassette, as mentioned in para 5(xi) in the Election petition formed an integral part of the Election Petition. In this connection it observed as under :—

- “19. It is urged by Mr. Poti, learned counsel appearing on behalf of the appellant that the video cassette is only an evidence of the fact stated in paragraph 5(xi) of the election petition, relevant portion of which has been extracted above. It has been alleged in paragraph 5(xi) that at the instigation of the first respondent, a video cassette called “Malayude Purogathi” means progress of Mala, which is the constituency in question. Further, it has been alleged that the persons whose speeches have been recorded in the video cassette regarding progress of Mala are two Government officers named in paragraph 5(xi), and that the cassette has been used in the constituency at the instigation of the first respondent. This has been averred as a corrupt practice. It is also mentioned in the same paragraph that the video cassette is produced with the election petition in a sealed cover. It is not disputed that by corrupt practice as referred to in paragraph 5(xi) of the election petition, the appellant is referring to the corrupt practice within the meaning of Section 123(7) of the Act. Section 123 enumerates the different corrupt practices for the purposes of the Act. One of the corrupt practices, as contained in Section 123(7) is the obtaining of procuring or abetting or attempting to obtain or procure by a candidate or his agent, any assistance other than the giving of vote for the furtherance of the prospects of that candidate's election, from any person in the service of the government and belonging to any of the clauses as mentioned in clauses (a) to (g) of the section. The significant ingredient of corrupt practice, as mentioned in Section 123(7) is that the assistance which is obtained or procured from a government servant of the classes mentioned in clauses (a) to (g) must be for the furtherance of the prospect of the election of the candidate who or on whose behalf such assistance has been obtained or procured. It is not disputed that the two government servants mentioned in paragraph 5(xi) of the election petition whose speeches have been recorded in the video cassette, are government servants within the meaning of Section 123(7).

20. The speeches of the two government servants relating to “Malayude Purogathi” that is, the progress

of Mala, simpliciter will not constitute a corrupt practice within the meaning of Section 123(7), the speeches of the said government servants as recorded in the video cassette and alleged to have been used in the constituency at the instigation of the first respondent, must be with a view to obtaining or procuring of abetting of attempting to obtain or procure the assistance for the furtherance of the prospects of the first respondent's election. It is urged by the learned counsel for the appellant that as no such allegation has been made in paragraph 5(xi), the allegations in that paragraph do not constitute a corrupt practice within the meaning of Section 123(7) and, accordingly, the video cassette does not form an integral part of that paragraph.

Thereafter the S. C. came to the conclusion that video cassette was an integral part of the Election Petition in the following words :—

21. We are unable to accept the contention. It is true that there is no allegation in paragraph 5(xi) that the video cassette was used by the first respondent for the purposes of any assistance for the furtherance of the prospects of his election. But, in our opinion, it is apparent that such an allegation is implied in the paragraph. After alleging that the video cassette was used in the constituency at the instigation of the first respondent, it is alleged that the same constituted a corrupt practice which points to the only fact that the video cassette containing the speeches of the government servants was used for the purpose of some assistance for the furtherance of the prospects of the election of the first respondent. It is implied that the video cassette is referred to in paragraph 5(xi) in regard to the alleged assistance for the furtherance of the prospects of the election of the first respondent and, accordingly the contents of the cassette are incorporated in that paragraph by reference. In other words, the cassette forms an integral part of paragraph 5(xi). In this connection, we may refer to Item No. 1 of the List of Documents which reads as follows :—

“1 Video cassette by Kala Audio, Killettumkora, Trichur District titled “Malayura Purogathi” prepared at the instance of the first respondent for election propaganda, as stated in paragraph 5(xi) of the election petition.”

The consequence of this finding was set out by the S. C. in paragraph 22 of the report which is reproduced below :—

- “22. It is clear from Item No. 1 of the List of Documents that it is the specific case of the appellant that the video cassette was prepared at the instance of the first respondent for election propaganda, as stated in paragraph 5(xi) of the election petition. Whether it was so stated in Item No. 1 of the List of Documents or not it is, as stated already, apparent on the face of the allegation in paragraph 5(xi) that it was used by the first respondent by way of assistance in furtherance of the prospects of his election and so the video cassette formed an integral part of paragraph 5(xi). Unless a copy of the video cassette was given to the first respondent, he would not know how the speeches of the said government servants could assist the furtherance of the prospects to this election and would not be in a position to deal with the allegations made in paragraph 5(xi). The copy of the election petition which was served on the first respondent without a copy of the video cassette was not, therefore, a true copy of the election petition within the meaning of Section 81(3) of the Act.

The Supreme Court distinguished the case of Sahodrabai (supra) in the following words :—

24. The decision in Sahodrabai case does not, in our opinion lend any assistance to the contention of the appellant that the video cassette is only evidence and does not form part of the election petition. In that case, the election petition reproduced the whole of the pamphlet and, accordingly, it was held that it was only an evidence and not a part of the election petition. What has been stressed in that case is that each and every document does not form part of the election petition. Moreover, the court was considering the scope of Section 83(2) of the Act before it was amended. We are unable to accept the contention made on behalf of the appellant that a document, in no circumstances, can form an integral part of the election petition. As has been noticed already, the pamphlet in that case was fully reproduced in the election petition and, therefore, it was merely an evidence and did not form a part of the election petition.

The case of Thakur Virendra Singh Vs. Vimal Kumar (A.I.R. 1976 SC 2169) was distinguished in the following words :—

25. In Thakur Virendra Singh Vs. Vimal Kumar the question was whether a leaflet, a copy of which was Annexure A to the election petition and referred to in paragraph 13 thereof, constituted a part of the election petition, and, accordingly should have been served on the elected candidate. This Court overruled the contention of the elected candidate that the petition was liable to be dismissed as the copy of the petition meant to be served on the appellant was not accompanied by a copy of Annexure A on the ground that the allegation of corrupt practice and particulars thereof, as given in paragraph 13 of the election petition, were sufficiently clear and precise. This decision is, therefore, of no help to the contention of the appellant that the video cassette is not a part of the election petition.

The earlier decision of the S.C. in the case of A. Madan Mohan Vs. Kalava Kunta Chandra Shekhar (A.I.R. 1984 S.C. 871) in which Karunanidhi's case (supra) was distinguished, has been distinguished with the following observations :—

33. Lastly, the decision of this Court in A. Madan Mohan Vs. Kalavankunta Chandrasekhar has been relied upon by the learned counsel for the appellant. We fail to understand how this case is of any assistance to the appellant, for in this case also this Court once more approved of the decision in Karunanidhi's case. No other point has been urged by either party in this appeal."

A consideration of the above authorities of the Supreme Court would show that while in one set of cases it has been held that the respondent is not entitled to get a copy of the document filed as evidence in the election petition, in the other set of cases it has been held that in a given situation, a document, if referred to in the petition, would stand incorporated in the petition by reference and become an integral part of the petition and in that event it would be incumbent on the petitioner to supply a copy of that document to the respondent as part of the petition. There is absolutely no conflict in the two sets of cases. The Supreme Court itself has already considered the question and explained the law in U. S. Sashidharan's case (supra).

Whenever, therefore, an objection is taken by the respondent that copies of documents were not supplied to him and that the election petition was liable to be dismissed summarily, it will have to be examined whether such document was filed merely as evidence or was it an integral part of the petition so that copy of it should have been given to the respondent.

It is on the basis of the principles contained in various decisions of the Supreme Court that a scrutiny is to be made of the documents regarding which the grievance raised by the respondent, in the instant case, is that copies thereof having not been supplied to him, the petition is liable to be dismissed at the threshold.

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Learned counsel for the respondent drew my attention to a number of documents mentioned in the body of the petition as also specified in Civil Misc. Application No. 89(E) of 1990 and Civil Misc. Application No. 113(E) of 1990 and contended that copies of all those documents should have been given to the respondent as part of the election petition as those documents were an integral part of the petition and the respondent was entitled to get the copies of those documents.

The first document is the cassette containing the tape-recorded speech of the respondent said to have been made by him on 6-11-1989 in a public meeting at Amethi. A mention of this meeting has been made in paragraphs 36(g) and 36(j).

It may be stated that the grounds of corrupt practices alleged to have been committed by the respondent, have been set out in paragraph 5 of the petition. The election has been challenged on the ground inter alia, that the respondent had "committed the corrupt practice of Booth capturing" as defined in Section 123(8) read with Section 58-A and Section 135-A as also the corrupt practice of "Undue Influence" within the meaning of Section 123(2) read with Section 79(d) of the Act.

In paragraph 8(i) of the petition, it is stated as under :—

"8(i). The returned candidate, Shri Rajiv Gandhi, visited various places in the Parliamentary Constituency of Amethi, about five times, between 6th and 18th November 1989 and addressed public meetings as part of his election campaign as per details given below :—

- (1) First visit 6-11-89 Addressed a meeting at Amethi
- (2) Second visit Between Addressed several meetings
- (3) Third visit 15-11-89 in's at Tiloi, Fursatganj,
- (4) Fourth visit and Salon and Gauriganj."
- (5) Fifth visit 13-11-89

In paragraph 8(iii), 8(iv), 8(v) and 8(vi) of the petition it is stated under :—

"8(iii) The returned candidate launched his election campaign at a public meeting in Ayodhya/Faizabad on 3-11-89 and promised at that meeting to usher in Ram Rajya. He also said that Ayodhya is the city of "Ramchandraj" upon which the people began to shout religious slogans. In the course of his speech he said that "Shri Raj Mohan Gandhi" (the petitioner herein) "would forfeit his deposit at Amethi."

"8(iv) At the public meeting held at Amethi on 6-11-1989 the Respondent exhorted the voters not only to vote for him but to defeat the petitioner. He also urged that the people should see to it that they (opposition candidates) "cannot set foot here again" adding that Party Office bearers which gives him the highest lead would be "better looked after". Further details of these exhortations by the Respondent herein are given later on in the petition."

"8(vi) On behalf of the petitioner, the Janata Dal and his party workers in 25 Amethi parliamentary constituency about the course of offensive approach to the election. These speeches by the respondent were calculated to and actually sowed the seeds of violence and rigging for the election."

"8(vi) On behalf of the petitioner, the Janata Dal General Secretary, Shri Yeshwant Sinha, wrote to the Election Commission of India on 9-11-1989 complaining about the speech at Amethi on 6-11-1989 by the Respondent herein pointing out the blatant manner in which the election campaign was being carried out by the returned candidate. No action had been taken by the Election Commission and no reply to the complaint was received."

In paragraph 9 of the petition it is stated as under :—

"9. During the election process, i.e. between 23-10-1989 and 22-11-1989, the returned candidate and his election agent, Shri Satish Kumar Sharma, his other agents and workers with the consent of the returned candidate and Shri Satish Kumar Sharma,

indulged in various acts of corrupt practices of bribery, undue influence, use of national symbols and incurring or authorising expenditure beyond the prescribed limit, obtaining and procuring assistance of gazetted officers of the Government and police personnel serving in the districts of Sultanpur and Rae Bareilly and other Gazetted Officers."

The petitioner proceeds to say that from 15-11-89, he began to receive the disturbing news from his workers that Congress (I) was making preparations for "Booth capturing" and rigging the poll on mass scale. The petitioner then proceeds further to say in paragraphs 15, 16, 17, 18, and 19 as under :—

"15. On 21-11-1989, a day prior to the date of poll and on 22-11-1989 the date of poll, violence had been let loose and rigging and 'booth capturing' on mass scale in all the five assembly segments of 25 Amethi Parliamentary Constituency were resorted to with the connivance and consent of the returned candidate, Shri Rajiv Gandhi, and also with the consent and connivance of Shri Satish Kumar Sharma, the election agent as above said. The Returning Officer and District Magistrate, District Election Officer Sultanpur, Superintendent of Police, Sultanpur, as also other police officials actively participated in such incidents of violence and booth capturing by their various acts of omissions and commissions. They were aiding and conniving at activities of rigging and booth capturing, thereby furthering the prospects of the returned candidate. The particulars of such activities have been given later in the petition."

"16. Violence on mass scale took place in all the five Assembly segments on 21-11-1989 and specially on the day of poll i.e. 22-11-1989 as a result of which the peaceful atmosphere in the entire parliamentary constituency had been completely fouled, leading to fear psychosis of voters. As a result a very large number of voters did not step out of their houses to go to exercise their vote at the polling stations. A very large number of voters in all five segments were prevented from going to their polling stations and exercising their votes. Many of the petitioner's workers and polling agents were beaten up and their life threatened on these two days. The polling agents were driven out and prevented from carrying out their assigned work. Free and fair poll became the casualty to these violences. These violent incidents were the handiwork of the Congress (I) workers and supporters and instigated by agents of the Respondent with the consent of the Respondent and Shri Satish Kumar Sharma. The petitioner and his representatives who were campaigning at Amethi made several representations and complaints, both oral and written and through telephone calls and telegrams to the Chief Election Commissioner, District Magistrate Returning Officer, Commission's Central Observer Shri Jagdish Sagar and police authorities regarding these incidents of violence. Complaints were also filed in regard to the above. No effective steps however were taken to stop these violent incidents which grew in number and also became more serious from the afternoon of 21-11-1989 and the whole of 22-11-1989. The details of violence are given later in the petition."

"17. The corrupt practice of booth capturing, rigging and undue influence had been committed on mass scale in all parts of the Parliamentary Constituency i.e. in all five assembly segments. These corrupt practices had been committed with the consent of the respondent and Shri Satish Kumar Sharma through the workers and supporters of Congress (I) party in particular the Block Pramukhs who were actively working for the Respondent. The police personnel and officials of the District Administration were also aiding and conniving at these activities of booth capturing in furtherance of the prospects of the election of the respondent with the consent of the respon-

dent and Shri Satish Kumar Sharma. They were holding high positions in the Government and were treated as on deputation to Election Commission by virtue of Section 28-A of the Act."

"18. The petitioner says and submits that the violence in the area was so serious that even the contesting candidates were not spared.

One of the contestants in Amethi Assembly Constituency and the running mate of the petitioner Dr. Sanjay Singh, a very popular leader of Janata Dal in Uttar Pradesh was shot at from a close range and in a murderous attempt while he was going round the Amethi Assembly segment on the day of poll i.e. 22-11-1989 at about 3.00 P.M. within Munshiganj Police Station a Bhusiyawa-Shabgarh Tiraha Junction Amethi Assembly segment. He had been struggling for long time for life being in a very critical condition. One of the worker of Janata Dal Raj Karan Singh also received serious bullet injuries and he succumbed to the injuries later in the Hospital. Two other workers namely Shri Om Prakash Singh and Shri Dhanraj Singh were also injured. Since the news of this incident spread like a wild fire in all Assembly segments, fear psychosis gripped and the electors who did not venture to go to their polling stations to exercise their vote.

The petitioner himself was roughed up and man-handled besides being detained during the course of his visit in the constituency in Palpur village (polling station Nos. 59 and 60) in Jagdishpur assembly segment."

"19. Armed men, possessing lethal weapons and mask-men with such weapons were freely moving in all the assembly segments on 21-11-1989 and on the day of poll i.e. 22-11-1989 supporting Congress (I) and they were threatening voters with dire consequences if they come out to exercise their vote. They were in possession of fire arms and other lethal weapons despite the fact that carrying of Fire arms had been prohibited under the instructions of the Election Commission. The District Magistrate-District Election Officer who was the Returning Officer and the Superintendent of Police, Sultanpur whose duties were to prevent such incidents were themselves aiding and conniving at such activities. The efforts of the petitioner and his workers to contact them and lodge their complaints personally proved futile as they were not found in their place of duty. However, these complaints were lodged at the office of the District Magistrate.

The polling agents of the petitioner in a number of places were either driven out or went out of polling stations on account of fear for their life. These factors accented the polling to the disadvantage of the petitioner. Number of workers of the petitioner and polling agents were also beaten up and driven out of the polling stations."

Let me now come to paragraph 34 of the petition. Just above para 34 is the "heading" reading as under :—

"Material facts and particulars of violence and corrupt practice of Booth capturing non-compliance of the provisions of the constitution, Act, Rules and orders thereunder."

After setting out the duties of the district Election Officer, the Returning Officer and the Superintendent of Police, the petitioner has, in this paragraph, pleaded that the directions of the Election Commission were not followed by the above authorities who used their authority in favour of the "powerful Rival candidate". It is also alleged in this paragraph of the petition that the ban on carrying of firearms was enforced in one sided manner to the advantage of the returned candidate and therefore proved to be a complete farce. It is alleged in para 35(a) that licensed fire-arms of congress workers and supporters were not in most of the cases deposited with the police authorities. It is further stated that even in cases where they were alleged to have been deposited earlier as per orders of the authorities, they were released subsequently.

The petitioner has also set out the names of the persons who continued to have the fire-arms with them. This, it is stated, enabled the Congress (I) workers of the respondent to misuse the fire arms to frighten and intimidate voters in the constituency and put the Janta Dal workers in "jeopardy".

Immediately after paragraph 35 is the headings.

"Out break of violence affecting free and fair poll" below which starts para 36 reading as under :—

"36. (a) The returned candidate Shri Rajiv Gandhi visited various places in 25-Amethi Parliamentary Constituency about five times between 6th and 18th November 1989, for his electioneering campaign.

(b) The details of the public meetings held in the constituency have been furnished in the foregoing paragraphs.

(c) At such meetings, Shri Satish Kumar Sharma, active workers and agents including the powerful Block Pramukhs and village Pramukhs who are the supporters of Congress (I) and who worked actively for the election of the returned candidate were present. The concerned District Magistrate-cum-District Election Officer-Returning Officer and the then Superintendent of Police, and other Government Officials were also present at most of these meetings.

(d) Between 15-11-1989 and 18-11-1989, Shri Rajiv Gandhi, the Respondent, addressed meetings in the Amethi Parliamentary Constituency at Tiloi, Fursatganj, Salon and Gauriganj where the attendance was very thin. The last meeting was held at Gauriganj on 18-11-1989 at Navodaya Vidyalaya Maadan. According to newspaper reports (Swatantra Bharat dated 19-11-1989) the said meeting was 'ying for an audience.'

(e) From the very beginning, the returned candidate became panicky about the outcome of the election results on account of the change in the mood and trend of the electorate. He resorted to offensive campaigns and exhortations at some of the meetings.

(f) As aforesaid at the meeting at Ayodhya on 3-11-1989, the launching of the election campaign, the returned candidate, Shri Rajiv Gandhi said that Raj Mohan Gandhi, the petitioner herein, should be made to forfeit his deposit.

(g) At the meeting held at Amethi on 6-11-1989 the returned candidate in clear terms urged during the course of his speech that the people should "see to it that they (opposition candidate) could not "set foot here again" adding that party office bearers which gives him highest lead would be better looked after". A report on this particular speech appeared amongst others in Times of India Lucknow Edition of 7th November 1989 and Nav Bharat Times of Lucknow dated 7-11-1989, Swatantra Bharat, Lucknow dated 7-11-1989; and an article by Sharad Joshi in Nav Bharat Times Lucknow dated 27-11-1989.

(h) At this meeting the returned candidate further spoke in the same vein. He exhorted that the people should see that the entire opposition should get less than 15% of votes in Amethi and that he (Raj Mohan Gandhi) should lose his deposit. He promised to give 'special consideration' to the workers who lead in this exercise.

(i) The petitioner's party, i.e. Janata Dal General Secretary, Shri Yeshwant Sinha, wrote to the Chief Election Commissioner on 9-11-1989 pointing out that the exhortation of the Respondent was a blatant inducement to booth capturing in order to ensure a minimum of 85% votes for Shri

Rajiv Gandhi and that such a call and inducement was shocking and reprehensible and further that the 85% limit was mentioned with a view to avoid getting into trouble with the Election Commission's norms of assuming 90% polling to be indicative of booth capturing. No action however was taken by the Election Commission.

(j) The speech in Hindi at the public meeting held at Amethi on 6-11-1989 in which the Respondent made such exhortations was also tape recorded by one of the persons present at the said meeting. The relevant portions of this tape recorded speech as follows :

"IS BAR BHI AGAR POORE VIPAKSH KE VOTE JORE JAYA TO UNHEY 15% SE KAM VOTE MILENE CHAHIYE". "AB GINTI KE DIN KE BAD MAIN AAP KO YAHAN AAKAR MILUNGA AMETHI ME, AUR PHIR HAM DEKTE HAI KI AMETHI LOK SABHA CHHETRA KE 5 VIDHAN SABHA CHHETRON ME KAUN SABSE AAGE NIKLEGA, AUR JO SABSE AAGE NIKLEGE US KHSHTRA KE KAR-YAKURTAGH KO, FAR HAM KHAS DHYAN RAKHENG".

(k) The petitioner alleges that these exhortations of the returned candidate who occupied the highest office of the Prime Minister were not only exhibiting a disposition towards offensive approach but also gave a clear signal to all concerned with the conduct of the poll about the course of offensive action and operations required of them to achieve the target."

In paragraph 36(e) it is stated the respondent became panicky about the outcome of the election results on account of the change in the mood and trend of the electorate. It is further stated that the respondent resorted to offensive campaigns and exhortations at some of the meetings. The petitioner then refers to the respondent's meetings at Ayodhya on 3-11-89 and Amethi on 6-11-89. It is the speech delivered by the respondent at Amethi on 6-11-1989 which has been tape-recorded.

In para 36(i) of the petition it is pleaded that the Janta uttered that the people should see to it that the opposition candidate does not set foot here again. He is also alleged to have exhorted the people to see to it that the entitled opposition gets less than 15% of votes in Amethi and that the petitioner loses his security deposit.

In para 36(i) of the petition it is pleaded that the Janta Dal General Secretary Sri Yeshwant Sinha wrote to the Election Commission that the exhortation of the respondent was a blatant inducement to "Booth capturing" but the Election Commission did not take any action.

"Booth capturing" as a corrupt practice is mentioned in Section 123(8) which was introduced in the Act by Act I of 1989 with effect from 15-3-1989.

Section 123(8) contemplates three categories of persons who may commit this corrupt practice. They are (i) a candidate (ii) his agent or (iii) other person.

The expression "agent" has been explained in Explanation (1) to Section 123 which says that for purposes of this section "agent" includes an Election Agent, a polling agent and any person who is held to have acted as an agent in connection with election with the consent of the candidate.

Explanation (4) says that "Booth capturing shall have the same meaning as in Section 135-A which provides as under :—

"135-A. Offence of booth capturing.—Whoever commits an offence of booth capturing shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine; and where such offence is committed by a person in the service of the

Government, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine."

Explanation.—For the purposes of this section "booth capturing" includes, among other things, all or any of the following activities, namely :—

- (a) Seizure of a polling station or a place fixed for the poll by any person or persons making polling authorities surrender the ballot papers or voting machines and doing of any other act which affects the orderly conduct of elections ;
- (b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and prevent others from voting ;
- (c) threatening any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote ;
- (d) seizure of a place for committing of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes ;
- (e) doing by any person in the service of Government of all or any of the aforesaid activities or aiding or conniving at, any such activity in the furtherance of the prospects of the election of a candidate."

The first part creates "Booth capturing" as an offence and provides for its punishment. It is in the Explanation appended immediately below the first part that "Booth capturing" has been defined by categorising the activities which are to be treated as, or, included in "Booth capturing".

In paragraph 36(j), a portion of the tape-recorded speech which is said to be the relevant portion, has been quoted.

It will thus be seen that the petitioner's own case is that the respondent had been exhorting the people through his speeches to indulge in "Booth capturing" and to adopt the "course of offensive action and operations to achieve the target. This also becomes absolutely clear from a perusal of paragraph 8 of the petition in which the petitioner has himself, with reference to the respondent's speeches made at Ayodhya on 3rd November, 1989 and Amethi on 6th November, 1989, pleaded (vide paragraph 8(v) that "these speeches gave a clear signal to the Agents and party workers about the course of offensive approach to the election. These speeches by the respondent, it is further pleaded, "were calculated to and actually sowed the seed of violence and rigging for the election".

The petitioner then proceeds to plead the violent incidents of 21st November, 1989 and 22nd November, 1989. The details of "Booth capturing" have also been set out by the petitioner in the schedule annexed with the petition.

Considered in the background of the above facts, it clearly comes out that respondent's speech made on 6th November, 1989 at Amethi is pleaded by the petitioner as part of the "corrupt practice of Booth capturing" although the speech by itself would not fall in any of the activities mentioned in the Explanation appended to Section 135A.

The next step in the scrutiny of this document, namely, the tape recorded speech of 6th November, 1989 of the respondent, is to see whether this document is an integral part of the present petition.

The corrupt practice of Booth capturing as set out in the petition runs into several phases or stages. The first stage is the speech of the respondent allegedly tape recorded at Amethi on 6th November, 1989 in which he is said to have exhorted the people to adopt the offensive approach towards the election in question. The speech having thus motivated the people to adopt a particular course of action, the fall out came to be noticed in the violent incidents of 21st November, 1989 and 22nd November, 1989, which constitute the

second and the third stage of the corrupt practice of "Booth capturing" set out in subsequent paras of the petition. The recorded speech alone does not contain all the material facts. The cassette, therefore, can not be treated to have become an integral part of the election petition by reference and the contention of the respondent that a copy of it should have been supplied to him has to be rejected in view of the doctrine laid down by the Supreme Court in *Sahodra Baj Rai Vs. Ram Singh Aharwar A.I.R. 1963 S.C. 1079* and *Thakur Virendra Singh Vs. Vimal Kumar, AIR 1976 SC 2169*.

The next documents are those which have been described in paragraph 76 of the petition. This para deals with the corrupt practice of the use of National Symbols contemplated by Section 123(3) of the Act. The whole of this paragraph together with its sub-paragraphs is reproduced below :—

"76. Corrupt practice of use of National Symbols.—The returned candidate and his election agent as aforesaid and with their consent other agents and workers of the Congress (I) party indulged in the corrupt practice of use of national symbols within the meaning of Section 123(3) of the Act. This had been done with a view to furthering the prospects of the election of the returned candidate. The instances of such corrupt practices are as under :—

- (a) They arranged to distribute freely a map of the 25 Amethi Parliamentary Constituency with five segments shown in separate colour scheme to the voters of the constituency during the election campaigns and election meetings. This map contains the reference to the development work alleged to have been done in the Amethi constituency in the past. While distributing the maps the Congress (I) campaigners called upon the voters to vote for the respondent showing the development work mentioned in the map. The map contained, amongst other, a national flag with the picture of Jawahar Lal Nehru superimposed thereon which is the symbol/emblem used by the Government in connection with the Nehru Centenary and covered by Law as National Emblem. The map has been published by the Survey of India, Government of India and was priced Rs. 2. The map has been printed specially for the Amethi constituency and with the election in mind. The use of the emblem/symbol of National flag with Jawaharlal Nehru's picture is an use of national symbol within the meaning of Section 123(3) of the Act.
- (b) Posters were printed with a background of the national symbol used by the Government of India in connection with the Nehru Centenary, i.e. with tri-colour background in the same manner as in national flag. Over these posters, the exhortation in words "Vote for" was superimposed. These posters were pasted and distributed with the consent of the Respondent over all places in the five assembly segments.
- (c) The Congress (I) magazine in Hindi "VARNIKA" published by the party head office at Delhi and circulated all over the country including the various places in Amethi constituency also contains the National Symbol with the pictorial representation of Jawaharlal Nehru as aforesaid with the appeal to voters to vote for the respondent and his party both appearing on the back and front cover pages. The magazine also contains an article relating the respondent and the petitioner under the title "ASLI GANDHI RAJIV GANDHI".

The above acts amount to the commission of corrupt practice of use of national symbol for the furtherance of the prospects of the returned candidate, by the returned candidate and by Shri Satish Kumar Sharma, his election agent. The above also amounted to appeal to the voters on the basis of the National Symbol. By these the respondent projected himself as a candidate of the State. These practices are covered under Section 123(3) read with Sections 100(1)(b) and 100(1)(d)(ii) of the Act."

Section 123(3) of the Act in which the corrupt practices of the use of national symbols has been described, provides as under :—

"123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this set."

- (1)
- (2)
- (3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols such as the national flag or the national emblem for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate;

Provided that no symbol allotted under this Act to a candidate shall be deemed to be religious symbol or a national symbol for the purposes of this clause."

The provisions extracted above indicate that there are many facets of this corrupt practice. It will be seen from an analysis of the aforesaid provisions that there are certain activities relating to religion, race, caste, community, language, religious symbols and national symbols which, if carried on by a candidate or his agent or by any other person with the consent of the candidate or his election agent, constitute a corrupt practice. The following activities, or, any of them, would be a corrupt practice :—

- (a) The appeal to vote for a candidate on the ground of his religion.
- (b) The appeal to vote for a candidate on the ground of his race.
- (c) The appeal to vote for a candidate on the ground of his caste.
- (d) The appeal to vote for a candidate on the ground of his community.
- (e) The appeal to vote for a candidate on the ground of his language.
- (f) The appeal not to vote for a candidate on the ground of his religion.
- (g) The appeal not to vote for a candidate on the ground of his race.
- (h) The appeal not to vote for a candidate on the ground of his caste.
- (i) The appeal not to vote for a candidate on the ground of his community.
- (j) The appeal not to vote for a candidate on the ground of his language.
- (k) Use of religious symbols for the furtherance of the prospects of the election of a candidate.
- (l) Appeal to religious symbols for the furtherance of the prospects of the election of a candidate.
- (m) Use of religious symbol for prejudicially affecting the election of any candidate.
- (n) Appeal to religious symbols for prejudicially affecting the election of any candidate.
- (o) Use of national symbols for the furtherance of the prospects of the election of the candidate is a corrupt practice.
- (p) Appeal to national symbols for the furtherance of the prospects of the election of the candidate.
- (q) Use of national symbols for prejudicially affecting the election of any candidate.

- (r) Appeal to national symbols for prejudicially affecting the election of any candidate.

In the instant case, it is the activity relating to the National Symbol which has been pleaded as a corrupt practice.

There are many National Symbols. The use of the word "Symbols" in a plural form itself is indicative of the plurality of symbols which is also confirmed by the use of the words "such as" before the words "National Flag or the National Emblem" occurring in sub-Section (3) of Section 123.

The significance and true meaning of the words "such as" occurring in this Section were explained by the Division Bench of this Court in *Karan Singh Vs. Jamuna Singh A.I.R. 1959 Allahabad 427* as follows :—

"The use of the expression 'such as' instead of 'including' or 'for example'; in our opinion connotes and idea that only those National Symbols should be taken into account which are like and similar to the National Flag or the National Emblem."

It was in this case that the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950 were considered and the National Flag was held to be a national symbol. The difference between "Symbol" and "Emblem" was also noticed in this case which has since been followed in *Ghayar Ali Khan Vs. Keshav Gupta AIR 1959 Allahabad 264* and *Rustom Satin Vs. Dr. Sampurnanand 20 E.L.R. 221*.

These decisions were cited before me by the counsel for the respondent to show that no case of corrupt practice of use of national symbols was made out and that paragraph 76 of the petition was liable to be deleted. This is the subject matter of a separate application given by the respondent under order 6 rule 15 and under order 7 rule 11 C.P.C. etc. Here, I am concerned with the question whether or not a true copy of the election petition was given to the respondent. To put it differently it is not the endeavour at this stage to consider whether the pleadings set out in paragraph 76 of the petition make out a case of corrupt practice of the use of National Symbols or that the pleadings are defective, vague or insufficient. The present effort is confined to a different question, namely, the question whether or not the documents specified in paragraph 76 of the petition are an integral part of the petition by reference and if the answer is in the affirmative, whether the copies of these documents should have been supplied to the respondent as part of the petition.

Let me now consider the pleadings of the petitioner as to the corrupt practice of use of National Symbols.

Para 76 it will be noticed, is headed as "Corrupt Practice of the National Symbols".

In the opening part of paragraph 76, it is stated in explicit terms that the respondent and his election agent and, with their consent, other agents and workers indulged in the corrupt practice of the use of national symbol with a view to furthering the prospects of the election of the returned candidate. The petitioner then proceeds to give three instances.

In the first instance as set out in sub para (a) of paragraph 76, there was a map of 25-Amethi Parliamentary constituency which, apart from showing the five Assembly segments in different colour schemes showed the development work carried out in the constituency. The map contained the National Flag with the picture of Jawaharlal Nehru super imposed thereon which was the symbols/emblem used by the government in connection with the Nehru centenary. This, it is pleaded, is covered by law as National Emblem. At the end of sub-para (a) it is stated that "the use of the emblem/symbol of National Flag with Jawaharlal Nehru's picture is an use of national symbol within the meaning of section 123(3) of the Act."

The second instance of the use of national symbol is contained in sub-para (b) wherein it is set out that posters were printed with a background of national symbol used by the Government of India in connection with the Nehru Centenary i.e. with tricolour background in the same manner as in the National flag. On these posters the exhortation in words "vote for" was superimposed. These posters were allegedly posted and distributed with the consent of the respondent, in the five Assembly segments.

The third instance is set out in sub-para (c) of para 76 in which the Hindi Magazine "Varnika" published by the Congress(I) party head office at Delhi is said to contain on its front and back page covers the National Symbol with the pictorial representation of Jawaharlal Nehru and an appeal to the voters to vote for the respondent and his party.

The petitioner reiterates in the last part of this para that the above acts amount to the commission of the corrupt practice of use of National symbol for the furtherance of the prospects of the returned candidate by the returned candidate and by Sri Satish Kumar Sharma his election agent. It is further said that this amounted to appeal to the voters on the basis of National symbol.

The use of National Symbol is thus said to constitute the corrupt practice under section 123(3) in two ways :

- (a) use of National Symbol was made for the furtherance of the prospects of the returned candidate, namely, the respondent.
- (b) An appeal to the National Symbol was made for the furtherance of the prospects of the election of the returned candidate.

The corrupt practice of use of national symbols is based on three documents referred to in sub-para(a), b) and (c) of para 76. These documents, as pointed out earlier, are (1) a map of the constituency, (2) poster and (3) Hindi Magazine "Varnika".

The material facts of the use of National Symbols which amount to a corrupt practice are :-

- (1) Use of or appeal to the national symbol.
- (2) The use of or appeal to National Symbols should be for the furtherance of the prospects of the election of a candidate or for prejudicially affecting the election of any candidate.

The commission of the corrupt practice has to be by a candidate or his agent or by any other person with the consent of the candidate or his election agent.

The material facts as to the use of the National Symbols are contained in the documents referred to above. On all the three documents national symbol was said to have been printed. The act of printing a National symbol would amount to the use of the National Symbol.

The National Symbol used on the document mentioned in paragraph 76(a) is the National Flag which undoubtedly is a National Symbol. It is pleaded that the picture of Jawaharlal Nehru was superimposed thereon. It is further pleaded that the use of the emblem/symbol of National Flag with Jawaharlal Nehru's picture is use of National symbol. The National symbol is thus clearly pleaded to have been used.

In paragraph 76(b) the use of National Symbol is mentioned thus :—

"Posters were printed with background of the National Symbol used by the Government of India in connection with the Nehru Centenary i.e. with tri-colour background in the same manner as in National flag.

The documents mentioned in paragraph 76(c) namely the Hindi magazine "Varnika" was said to contain "the national symbol with the pictorial representation of Jawaharlal Nehru." The documents are also said to contain the word "vote for". What was printed immediately after these words is not indicated so that the person for whom the words "vote for" were mentioned on this document remains indeterminate. In respect of the document mentioned in paragraph 76(c) it is pleaded that there was an appeal contained therein to vote for the respondent and his party. The National Symbol/Emblem were used through these three documents for the furtherance of the prospects of the respondent's election.

This would indicate that the respondent, in order to give an effective reply has to have a look at these documents to find out all the material facts relating to this corrupt practice particularly as the national symbol itself has been differently described on the three documents.

If it were merely the use of National Flag, the matter would have been different as every citizen of the country is aware of the contents, colour and contours of the flag and perhaps none would be permitted, nor would he be heard to say that he would first see at the flag or its photograph to understand what a National flag is. But here, in the instant case the position is different. Here, the petitioner has used the words "National Flag", "National emblem", "national symbol", "symbol/emblem used by the Government in connection with the Nehru Centenary" and other similar expressions in paragraph 76 of the petition. What, therefore, it conveys is utter confusion. An inquisitive mind would not rest until it had a look at the three documents to find out what exactly is the national symbol or national emblem etc. pleaded by the petitioner.

The national symbol or emblem or the national flag with the photograph of Jawaharlal Nehru superimposed thereon which is pleaded as a national emblem is an object used on the document. It is the use of this object which is the corrupt practice. The object is, therefore, an essential part of the material facts constituting this corrupt practice. It is this object which is to be looked at to be understood.

At this stage I may refer to the observations of the Supreme Court in *M. Karunanidhi's case* (supra) (AIR 1983 SC 558) in respect of a photograph of a fancy banner which was the subject matter of the corrupt practice envisaged by section 123(6) of incurring election expenses in violation of Section 77 of the Act. The Supreme Court observed at page 570 of the report as under :—

"Admittedly, a copy of the photograph was not furnished to the appellant along with a copy of the election petition. The averment contained in paragraph 19(b) would be incomplete without a copy of the photograph being supplied with a copy of the election petition. The averment therein is that the appellant committed a corrupt practice under sub-section (6) of Section 123 of the Act by incurring or authorising expenditure in contravention of S. 77. It is alleged that the appellant had set up fancy banners throughout the constituency and the number of such banners was about 50, the cost of each such banner being not less than Rs. 1,000/- and therefore the expenditure involved in erecting these 50 banners was not less than 50,000/- but that the appellant had not disclosed the amount in the return of the election expenses and thus committed a corrupt practice under sub-section (6) of Section 123 of the Act.

29. It is not possible to conceive of the dimension of the large fancy banner unless one has a look at the photograph. The photograph filed with the election petition gives a visual description of the fancy banner, the cost of which at a mere look would show that the expenditure in setting up each such banner would be Rs. 1000/- or more.

Nevertheless, without being furnished with a copy of the photograph, the averments in paragraph 18 (b) would be incomplete as regards the allegations of the corrupt practice committed by the appellant".

The Supreme Court further observed in para 39 of the report on page 573 as under :—

"The test to be applied in determining whether the photograph referred to in paragraph 18(b) is an integral part of the election petition or was merely a piece of evidence in proof of the allegation contained therein, depends on whether it is a part of the pleadings".

The Supreme Court in the above case had held the photograph to be a part of the pleadings.

I am, therefore, clearly of the view that all the three documents constitute an integral part of the petition, being an essential component of the corrupt practice of use of national symbol as set out in para 76 of the petition.

There is another reason, and I should say, a very strong reason, for holding that these documents are an integral part of the petition by reference. The reasons is this.

Use of national symbol has also been pleaded as a corrupt practice of undue influence.

In para 80 of the petition, it is stated as under :—

"80. Corrupt Practice of Undue Influence--

- (a) In addition to the above the facts mentioned in the paragraphs hereinabove concerning the activities of Shri Subhash Kumar, District Magistrate and Returning Officer, Sulampur, Shri Vijay Baghav Pant, Superintendent of Police Shri Pradeep Kumar Verma, SHO Jagdishpur as well all other activities constituting the corrupt practices of Booth Capturing, bribery, use of National Symbol etc. also amount to Undue Influence within the meaning of Section 123(3) of the Act.
- (b) The National Flag, National symbol, Officials of the State, Security and Police Forces, Government Funds and promises of Governmental largess all were used to promote the respondent's prospects. Instead of contesting the election as one citizen against other citizens, he projected himself as the candidate of the Government, State and nation and used their resources. Not content with this, he resorted to booth capturing and intimidation on a wide scale."

I am not concerned at this stage, with the question whether, on the facts pleaded in respect of a distinct corrupt practice, it is permissible to a petitioner to plead, at another place of the petition, that the facts earlier given in respect of that corrupt practice also constitute another corrupt practice as, otherwise, the S.C. in *Lalit Kishore V. J. P. Thada* 1990 (1) Scale 199, which has again been considered by me on 69 of this judgment, has held that it is not permissible.

What is relevant is that the petitioner, on the basis of facts already given in respect of the corrupt practices of Booth capturing, Bribery, and use of National symbols, has pleaded that the said activities also constitute the corrupt practice of "Undue Influence."

"Undue Influence" has been specified as a separate and distinct corrupt practice under section 123(2) and not 123(3) which has come to be mentioned in the last line of sub-para (a) of paragraph 80.

Section 123 (2) provides as under :—

"123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act :—

(1).....

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent with the free exercise of any electoral right :

Provided that,—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community ; or

(ii) induces or attempts to induce a candidate or an elector to believe that he or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure.

shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause :

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause."

The essential ingredients of this corrupt practice which deals with any direct or indirect interference or attempt to interfere on the part of the candidate or his agent or any other person with the consent of the candidate or his election agent with the free exercise of any electoral right, are distinct from those of the corrupt practices of the use of National symbol.

"Electoral Right" has been defined in Section 79(d) as under :—

"79(d) "electoral right" means the right of person to stand or not to stand as, or to withdraw or not to withdraw from being, a candidate, or to vote or refrain from voting at an election ;"

The electoral rights of a person at an election contemplated by the definition are :—

- (i) the right to stand as a candidate,
- (ii) the right not to stand as a candidate,
- (iii) the right to withdraw from being a candidate,
- (iv) the right not to withdraw from being a candidate,
- (v) the right to vote.
- (vi) the right not to vote.

The right to vote is contained in section 62 of the Act which provides as under :—

"62. Right to vote.—(1) No person who is not, and except as expressly provided by this Act, every person who is, for the time being entered in the electoral roll of any constituency shall be entitled to vote in that constituency.

(2) No person shall vote at an election in any constituency if he is subject to any of the disqualifications referred to in section 16 of the Representation of the People Act, 1950 (4 of 1950).

(3) No person shall vote at a general election in more than one constituency of the same class and if a person votes in more than one such constituency, his votes in all such constituencies shall be void.

(4) No person shall at any election vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if he does so vote, all his votes in that constituency shall be void.

(5) No person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police :

Provided that nothing in this sub-section shall apply to a person subjected to preventive detention under any law for the time being in force."

Any interference or attempt to interfere with the free exercise of any of the electoral rights specified above at serial (i) to (vi) will be a corrupt practice of "undue influence".

There is also a "deeming" provision contained in clause (a) of the proviso to sub-section (2). It lays down that if any person, namely, the candidate or his agent, or, any other person with the consent of the candidate or his election agent carries on the activities specified in sub-clause (i) and (ii) of clause (a), he shall be deemed to interfere with the free exercise of the electoral right.

In *Lalit Kishore Chaturvedi Vs. J. P. Thada* 1990(1) Scale 199 the Supreme Court speaking through Hon'ble R. M. Sahai J. observed as under :—

"Undue influence is an inference which arises on facts pleaded and proved. More averment that applicant exercised undue influence in absence of precise facts, namely, the nature of such influence the person on whom it was exercised and time and place of it the pleadings in paragraphs (i) and (j) fell short of the requirement in law. Allegations fishing and reviving, as were pleaded in this case could not

be said to be sufficient compliance of section 83(1)(b)."

It may be mentioned that in this case also the petitioner had pleaded two corrupt practices on the basis of same facts and the Supreme Court observed :—

"Although much was argued on 123(2) but no specific pleading could be pointed out in this regard. No details of undue influence or direct or indirect interference by the appellant, or his agent, with his consent with free exercise of electoral right was raised. In fact guilt under section 123(2) was attempted to be made on same pleading, namely, paragraph 3(i)(j). The ingredients of the two being different they were to be pleaded specifically and the details were to be furnished separately to give a clear picture of cause of action."

Since it has been set out in para 80 of the petition that the facts given in respect of the corrupt practice of use of national symbol also constitute the corrupt practice of undue influence, one has to revert to the facts set out in para 76 of the petition in which the corrupt practice of the use of national symbols, based on three documents, has been pleaded. If those facts are treated as pleadings of the corrupt practice of undue influence it will be noticed that the petitioner has not set out the material facts relating to this corrupt practice and in order to find out the material facts and particulars, one has necessarily to look into and read the contents of the documents mentioned in sub paras (a), (b) and (c) of paragraph 76.

For purposes of the corrupt practice of undue influence, therefore, those documents become incorporated in the petition by reference and constitute an integral part of the election petition in accordance with the principles set out by the Supreme Court in *U. S. Sasidharan's case* (supra) (AIR 1990 SC 924-1989 (4) SCC 482).

It is not disputed by Sri S. C. Maheshwari, appearing on behalf of the respondent, that copies of two of the documents namely the map mentioned in para 76(a) and cover pages of the Hindi magazine "Varnika" have been supplied to him. He, however, insists that since whole of the magazine was referred to in para 76(c) of the petition, the copy of the whole magazine should have been given to the respondent. This submission cannot be accepted, at least for purposes of the corrupt practice of use of national symbol.

Sri S. C. Maheshwari contends that copies of these documents were not supplied to him as part of the petition but as part of the documents filed with the petition and, therefore, the petitioner cannot be said to have supplied a true copy of the petition to him. Sri Maheshwari should thank the courtsey of Sri Ramachandran in supplying him the copies of the documents filed as evidence in the case which he was otherwise not entitled to get and, therefore, he need not attempt to make any capital out of it.

The petitioner while setting out the corrupt practice of use of National Symbols had categorically and specifically mentioned that the National Symbol was used on the front and back cover pages of the magazine. These pages alone, therefore, stood incorporated in the petition by reference for purposes of the corrupt practice of use of National symbol and since copies of these two pages have already been furnished to the respondent, no grievance can possibly be raised in respect of these documents.

But the matter does not end here.

For purposes of the corrupt practice of Undue influence, another page of magazine "Varnika" containing the article "Asli Gandhi Rajiv Gandhi" stands incorporated in the petition because the petitioner does not set out the material facts of the corrupt practice of undue influence and refers merely to this article which has to be read to understand the petitioner's case as to how the respondent interfered or attempted to interfere with the free exercise of the electoral right through this article. A copy of this article has

already been given to the respondent and, therefore no grievance can be raised by the respondent in respect of this document.

The copy of the poster referred to in paragraph 76(b) has also not been given to the respondent by the petitioner on whose behalf it is contended that since this document was not in the possession and control of the petitioner he could not be compelled to supply a copy of the said document. This plea has to be rejected.

It has already been held by me in the earlier part of the judgment that this document is an integral part of the petition by incorporation. The use of the National symbol together with an "appeal to vote" indicating that furtherance of the prospect of the election was the purpose of the document, would be apparent from a look at the document which alone, on account of the material facts contained therein, would make the pleadings clear and specific. This document alone would give a visual description of the poster containing also an appeal to vote.

Since copy of this document has not been given to the respondent, not even as part of the petition, provisions of Section 81(3) of the Act cannot be said to have been complied with.

Similarly, for purposes of the corrupt practice of undue influence, this document, namely the poster referred to in paragraph 76(b), has to be looked into to find out the material facts of this corrupt practice and to further find out how the respondent interfered or attempted to interfere with the free exercise of the electoral rights by the voters. The petitioner himself has not, as pointed out earlier, given the material facts or particulars of the corrupt practice of undue influence except by saying in paragraph 80 that the facts relating to the corrupt practice of use of National symbol also constitute the corrupt practice of undue influence. The copy of this document should also have been supplied to the respondent as the said document, for purposes of the corrupt practice of undue influence, was an integral part of the petition and not a document in evidence.

It may be stated that the corrupt practice of undue influence has also been pleaded in other paras of the petition including para 75 which, incidentally, is not supported by an affidavit but I am not concerned with those other paras as the petitioner himself has confined his case only to para 76 by saying in para 80 of that the activities constituting the corrupt practice of use of National symbol also amount to undue influence within the meaning of Section 123(3) of the Act.

Similarly in respect of the map of the Amethi Parliamentary constituency containing a reference of the development work, another corrupt practice has been pleaded by the petitioner in para 78 of the petition. This corrupt practice relates to the obtaining or procuring assistance of Gazetted Officers/Police Officers for the furtherance of the prospects of the returned candidate. The relevant portion of paragraph 78 is quoted below :—

"In addition to the above, the respondents with his consent his agents caused the officials of Ministry of Defence and the Survey of India Government of India to print and publish a special map for the 25 Amethi Parliamentary Constituency showing the development work in the constituency with the object of furthering the prospects of the election of the first respondent within the meaning of Section 123(7) of the Act."

Now, Section 123(7) provides as under :—

"123(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance other than the giving of vote for the furtherance of the prospects of that candidate's from any person in the service of the Government and belonging to any of the following classes, namely :—

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
provided.....

The petitioner has merely referred to the "officials" of the Ministry of Defence and the Survey of India as having printed and published the map in question showing the development work done in the constituency. How has the map furthered the prospects of the election of the respondent and how has the so-called development work been described will be clear from the perusal of the map which would also give out the material facts.

The essential ingredients or the material facts of this corrupt practice have not been set out in the petition but a reference has been made to the map from which it is to be inferred that this corrupt practice was committed by getting the map published and utilising it for the furtherance of the prospects of the election of the respondent. The map therefore stands incorporated in the petition by reference in accordance with the principles laid down by the Supreme Court in *U. S. Sasidharan's case* (Supra) A.I.R. 1990 SC 924—1989 (4) SCC 482.

The next document complained of is the video film mentioned in para 72(a)(iii) and (vi) as also in sub-para (b) of the said paragraph.

It may be stated that at the intervention of the Election Commission of India, a repoll was held on 27-11-1989 at a number of polling stations. The repoll has also been questioned by the petitioner and in this regard he has set out in para 72 as under :—

"REPOLL ON 27-11-1989

72(a) The unsatisfactory conduct of the repoll on 27-11-1989 was reported to the petitioner by various independent observers in the following terms and they were revealing more startling things in regard to the poll including the following :—

- (i) Polling in a very large number of polling stations did not commence at the appointed time. Even upto 10 A.M., the poll did not commence as paper seals were not supplied to them.
- (ii) Without the paper seals, an important provision for securing and ensuring intamperability of the ballot boxes, the ballot boxes were used at the polling stations.
- (iii) The polling staff themselves was either stamping or assisting the voters openly in stamping their votes on the ballot papers, or openly unfolding the ballot papers marked by the voters and inserting themselves after such inspection of the mark of vote into the ballot boxes, or instructing the voters by clear indications to mark their votes on the symbol of the returned candidate.

This was also found and filmed by the Advocates representing the Independent Initiative in polling booth Nos. 59 and 60.

- (iv) The independent initiative observers noticed serious irregularities in booth numbers 13, 14, 59, 60, 69, 81, 82, 90, 91 and 92 where the statutory paper seal required to be affixed to secure the ballot boxes against intamperability was not used and in fact was not there. This fact was acknowledged by the presiding officer of other polling stations mentioned above however refused to acknowledge. The team also found a

Congress (I) jeep bearing No. DNA 5766 parked within 15 metres of polling station numbers 81, 82 and 83. They also found that at more than one place the voters expressing fears of retaliation for voting against the Ruling party. The report of the Independent Initiative was prepared by S. S. Rathore, Rajiv Bhushan and Saidullah, Advocates Allahabad and was duly submitted to the Election Commission.

- (v) The same set of Presiding Officers and polling officers were posted for duty at these 97 polling stations and 8 Auxiliary polling stations on 27-11-1989 even though the repoll had been held on account of the poll held on 22-11-1989 in these stations with the Presiding Officers and polling officers were found to be irregular.
- (iv) As mentioned above the actual conduct of repoll in some places was filmed and recorded in video cassettes by the Independent Initiative. The disclose over and above the rigging as described above, some of the other glaring irregularities such the clear violation of the law in regard to the plying of vehicles carrying voters to polling stations in the presence of agents and workers of the returned candidate the open admission by village Pramukhs of the use of number of tractors with trailers, jeeps, trucks etc. for carrying voters to and from polling stations.
- (b) The petitioner praves leave of this Hon'ble Court to summon and exhibit the video film in the proceedings in support of the above.
- (c) In view of the above, the entire repoll in 87 polling stations became also vitiated and the whole proceedings of the repoll was a farce. In retrospect, the boycott of repoll by the petitioner was fully justified.

In para 66 of the petition the petitioner has dealt with Commission's Central Observers' report while in para 67, the visit of Commission's team headed by Sri C. L. Rose has been described and discussed. The petitioner then proceeds to say in para 68 that on 26-11-89 the Election Commission of India ordered repoll in 97 polling stations and 8 auxiliary polling stations and that removal of District Election Officer-cum-District Magistrate-cum-Returning Officer as also that of Superintendent of Police was ordered.

In para 29 of the petition, the repoll has been referred to as farce. In para 32 of the petition it has been stated as under :—

"32. The repoll ordered was also dull registering very low percentage of voting. As the repoll in 97 polling booths and 8 auxiliary polling booths serious irregularities were committed in almost all the polling booths. The details are given later in this petition."

I have already quoted para 72 of the petition in which the irregularities etc. in respect of the repoll held on 27-11-1989 have been indicated. The petitioner then stated in sub-para (c) thereof that in view of what was stated above, the entire repoll was vitiated. We have, therefore, to scrutinise the contents of paragraph 72 to find out the grounds of challenge.

In sub-para (iii) of para 72(a) it has been stated that the poll commenced at the appointed time while in (ii) the ballot boxes used at the polling stations were without the paper seals. These constitute the violation of the Act and the statutory rules.

In sub-para (iii) of para 72(a) it has been stated that the polling staff had committed a number of irregularities, namely :—

- (a) They were themselves stamping votes on the ballot papers or
- (b) they were assisting the voters openly in stamping their vote on the ballot paper or

- (c) openly unfolding the ballot paper marked by the voters and inserting them in the ballot boxes after inspecting the mark of vote or
- (d) instructing the voters to mark their votes on the symbol of the returned candidate.

Regarding the above irregularities it is said that they were filmed by the advocates representing the "Independent Initiative."

In sub-para (vi) of para 72(a) it has been said that the conduct of the repoll in some places was filmed and recorded in video cassettes by the "Independent Initiatives" which disclose the rigging as also other irregularities regarding plying of vehicles carrying voters to the polling stations in the presence of the agents and workers of the returned candidate and the open admission by village Pramuks of the use of tractors with trailers, jeeps, trucks etc. for carrying voters and from polling stations.

The grounds on which the election of a returned candidate can be challenged are specified in Section 100 of the Act of which the relevant portions are quoted below :—

"100—Grounds for declaring election to be void.—

- (1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

- (a)
- (b)
- (c)

- (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

- (i)
- (ii)

- (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

- (iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

(2)"

The irregularities set out in sub-para (iii) above which are said to have been filmed indicate improper reception of votes which is a ground contemplated by Section 100(1) (d) (iii) of the Act.

A video film is also said to have been prepared of the irregularities set out in sub-para (vi) of para 72(a). These irregularities are covered by the provisions of Section 100(1) (d)(iv).

Section 83 of the Act which deals with the contents of the election petition provides that an election petition shall, inter-alia, contain a concise statement of the material facts on which the petitioner relies. The requirement as to the material facts applies not only to the pleadings relating to the corrupt practices but also to any other ground specified in Section 100 on which the election of the returned candidate might have been challenged.

What is the meaning of the phrase "Material facts" has been explained by the Supreme Court in several cases including *Harish Chandra Bajpai vs. Triloki Singh* AIR 1957 S.C. 444, *Samant N. Bal Krishan Vs. George Fernandez* AIR 1969 S.C. 1201, *Manubhai Nand Lal Amersey V. Popat Lal Manilal Joshi and others* 1969 (3) SCR 217—AIR 1969 S.C. 734.

In *Azhar Husain Vs. Rajiv Gandhi* AIR 1986 SC 1253, the Supreme Court observed as under :—

"Material facts are facts which if established would give the petitioner the relief asked for. The test required to be answered is whether the court could

have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition."

These decisions have been considered and followed by the Supreme Court in *Lalit Kishor hCaturvedi Vs. J. P. Thada* 1990(1) Scale 199 and the view earlier expressed as to the true meaning of the words "Material facts" has been reiterated.

Material facts must, therefore, bring out the ingredients of one of the grounds contemplated by Section 100 on which the election has been challenged and if any of the ingredients is not pleaded, it would mean that complete cause of action has not been pleaded.

The principle set out above as to the requirement of "Material facts" was also applied by the Supreme Court to the petitions in which the ground under section 100(1)(d)(iii) was raised. In *Ram Sewak Yadav V. Husain Kamil Kidwai and others* AIR 1964 SC 1249 in which the ground under section 100 (1)(i)(iii) was raised and an application for inspection of ballot papers was moved, the Supreme Court observed that the petition must fulfil two conditions one of which was stated in the following words :—

- "(i) that the petition for setting aside an election contains an adequate statement of the of the material facts on which the petitioner relies in support of his case" (emphasis supplied).

This has been reiterated by the Supreme Court in several cases some of which are *Jagjit Singh Vs. Gyani Kartar Singh* AIR 1966 SC 773; *Sumitra Devi Vs. Sri Sheo Shankar Prasad Yadav* AIR 1973 SC 215; *Vitendra Bahadur Singh Vs. Krishna Bihari* AIR 1970 SC 276 and *Beli Ram Bhaleik Vs. Jai Bihari Lal* AIR 1973 SC 283."

I have already referred to the Supreme Court decision in *U. S. Sasidharan Vs. S. Karuna Karan and others* AIR 1990 SC 924—1989 (4) SCC 482 in which the Supreme Court held that the material facts or particulars may be contained in a document and if a reference is made to this document without pleading its contents, the document becomes incorporated in the petition by reference.

In para 72(a) (iii), petitioner positively has not set out the material facts regarding the ground raised therein. Which was the polling station where polling booths number 59 and 60 were situate has not been indicated. If polling station and polling booths are not to be treated as two distinct places and the film was made of the illegalities committed at polling booth nos. 59 and 60, then the further material facts as to who amongst the polling staff, whether the Presiding Officer or the polling officers appointed under section 26 of the Act, committed the illegalities of marking the ballot papers or instructing the voters to mark their votes on the symbol of the respondent. The Presiding Officer or the polling officers can be identified only through the film made by the "Independent Initiative" as the petitioner has not given their names in the petition which constitutes another omission of a material fact.

The video cassettes or the film made by the "Independent Initiative" is claimed in sub-para (vi) of this para to indicate further the irregularities in respect of the plying of vehicles, carrying of voters to the polling stations in the presence of agents and workers of the respondent. The film further reveals the admissions made by village Pramuks of the use of vehicles (tractors with trailers, jeeps, trucks etc.) for carrying voters to and from the polling stations. Apart from these irregularities, the film is further claimed to show rigging described in sub-para (iii) of this para in which marking of ballot papers is alleged to have been done by the polling staff which constitutes a violation of the provisions of Section 59 (manner of voting at election) read with section 62 of the Act and rules 38 and 39 of the Conduct of Election Rules, 1961.

All the material facts are, therefore, contained in the video cassettes which in view of the law laid down by the Supreme Court in *U. S. Sasidharan's* case (Supra) constitute an integral part of the petition.

It is not disputed that copy of this video film has not been given to the respondent. Section 81(3) of the Act has therefore, not been complied with.

Sri M. C. Ramachandran has strenuously urged that Section 81(3) of the Act cannot be stretched to cover those documents which are not even filed with the petition. He contends that the word "copy" used in Section 81 means copy of the "petition as filed in the Court". Question of non-compliance with Section 81(3), according to Mr. Ramachandran, will arise only where the copy served on the respondent is an incomplete copy of the petition in the sense that any part which would include any page, annexure or schedule of the petition "as filed in the court" is not given to the respondent. Section 81(3) it is contended, will not cover documents which ought to have been filed with the petition. He refers to the cases of *U. S. Sasidharan* (AIR 1990 SC 924) and *M. Karumandhi Vs. H. V. Hande* (AIR 1983 SC 58) and points out that in both the cases the documents complained of, namely video cassette in Sasidharan's case and the photograph of the fancy banner in Karumandhi's case, were actually filed in the court but the copies were not given to the respondent in those cases and it was in this context that it was held that there was non-compliance of Section 81(3).

I am not prepared to accept this contention.

I have already discussed all the Supreme Court decision on the point in great detail and have indicated the law laid down by their Lordships of the Supreme Court as to when a document stands incorporated in the election petition by reference so that it becomes an integral part of the petition with an obligation on the part of the petitioner to supply a copy of that document to the respondent whether that document is filed in the court or not.

Sri M. G. Ramachandran then drew my attention to the list of documents filed with the petition and pointed out that video film, the map, the poster and the magazine have been indicated in the list which is a positive indication that they were meant to be utilised by the petitioner as evidence in the case and therefore, they cannot be treated as integral part of the petition.

In view of my findings recorded earlier these contentions cannot be accepted nor can the principles laid down in *Sahodra Bai's* case (AIR 1968 SC 1079), or *Virendra Singh's* case (AIR 1976 SC 2169) be invoked in respect of the documents which have been held by me to be an integral part of the petition.

Let me now proceed to consider the other documents of which copies have not been given to the respondent.

In paragraphs 21 and 22 of the petition, the petitioner has referred to a representation made by certain prominent citizens to the President of India about Booth Capturing etc. It is contended that a copy of this representation ought to have been given to the respondent as part of the petition. It is also claimed that a copy of the complaint made by Sri Shanker Saran [referred to in para 35(b), (c) and (d) of the petition] as also copy of the memorandum or complaint of Sri Dilip Chakravorty referred to in para 39(c) of the petition ought to have been given to the respondent who also complains of non-furnishing of the copies of the complaint referred to in para 60(1) and (n), report of the "Independent Initiative" referred to in para 65(i), copy of the complaint referred to in para 65(vii) and Newspapers report referred to in para 65(ix) of the petition.

These documents have been scrutinised by me and, in my opinion, all of them are covered by the dictum laid down by the Supreme Court in *Sahodra Bai Rai vs. Ram Singh Aharwar* AIR 1968 SC 1079 (Supra) and *Thakur Virendra Singh Vs. Vimal Kumar* AIR 1976 SC 2169 (supra) as all these documents were merely evidence in the case and not an integral part of the petition.

The representation referred to in para 22 which was made to the President of India is only a memorial to the highest authority in the country which forwarded the memorial to the Election Commission of India and the Election

Commission of India, in its turn, sent its team of Officers to the Constituency for an investigation on the spot. Thereafter from para 23 to 32, the petitioner has dealt with the activities of the Commission and the order of re-poll regarding which further details have been given in subsequent paras, namely, paras 66 to 69 of the petition. The representation merely reflects the reaction of the people including those who made the representation as to the corrupt practices and the irregularities committed during the election. This document, therefore, cannot be treated to be an integral part of the petition.

So also the complaint of Sri Shankar Saran referred to in para 35 which was made to the District Magistrate regarding the situation in Jagdishpur and Salon Assembly segments or the memorandum of Sri Dilip Chakravorty referred to in para 38(b) and (c) cannot and do not constitute an integral part of the petition as they, in themselves, do not contain the material facts of the corrupt practice of "Booth capturing" which have been described in various other paragraphs of the petition.

The written complaints referred to in para 60(1) and (n) of the petition, made at the time of counting to support the plea that the ballot boxes had been tampered with are merely of evidentiary value. The complaints would show that at the time of counting an objection was raised by or on behalf of the petitioner and that such an objection was not an after thought. They cannot, therefore, be treated to be part of the petition.

Report of "Independent Initiative" referred to in para 65(i) also is not an integral part of the petition as the petitioner himself has set out the violent incidents of 21-11-1989 and 22-11-1989 leading to "Booth Capturing" in other paras of the petition and it is thereafter that he refers to the report of "Independent Initiative" to say perhaps that the report will bear him out that a re-poll was required to be held in the whole of the constituency.

The written complaint referred to in para 65(vii) and the Newspaper reports referred to in para 65(ix) can also not be treated to be an integral part of the petition by reference as the petitioner himself says in sub-para (vii) that details have been given in the earlier para of the petition while the editorials and reports of the correspondent appearing in the newspapers regarding Booth capturing were meant only to emphasise the need for a re-poll and have not been referred to as part of the material fact of the corrupt practice of "Booth Capturing".

Admittedly, copies of all other documents mentioned in the application [C. M. Application No. 113(E) of 1990] have been given to the respondent who therefore, cannot raise any grievance as to the non-supply of copies of these documents.

The petitioner, has also raised certain objection as to the maintainability of the two applications, namely, C. M. Application No. 89(E) of 1990 and C. M. Application No. 113(E) of 1990 which may now be considered.

It is pointed out by Sri M. G. Ramachandran that in his application [C. M. Application 36(E) of 1990], the respondent had not originally prayed for the dismissal of the petition for non-compliance of Section 81(3) of the Act and therefore, such a plea cannot be raised in a subsequent application. The objection is without merit.

It is true that in C. M. Application No. 36(E) of 1990, the respondent had made no specific prayer for the dismissal of the petition for non-compliance of Section 81(3) but the vital fact cannot be ignored that the respondent did raise the plea of non-compliance of Section 81(3) in para 4 of that application which was also supported by his affidavit. I have already set out the prayers made in this application on pages 2 and 3 of this judgment which would indicate that in spite of the plea of non-compliance of Section 81(3) having been raised, the prayer was made for the dismissal of the petition on other grounds.

In this situation it was open to the respondent to make C. M. Application No. 89(E) of 1990 and C. M. Application No. 113(E) of 1990 for the dismissal of the petition for non-compliance of Section 81(3) of the Act. None of

the application would be barred by the principles of constructive res-judicata which, as a matter of fact, do not apply to the instant situation and cannot be invoked.

It will be useful at this stage to refer to the decision of the Supreme Court in *Udhav Singh Vs. Madhav Rao Scindia AIR 1976 SC 744* in which the Supreme Court while considering the non-compliance of Section 82 of the Act observed as under :—

“Section 82(b) in clear peremptory terms, obligates an election-petitioner to join as respondent to his petition, a candidate against whom allegations of any corrupt practice are made in the petition—Disobedience of this mandate, inexorably attracts Section 86 which commands the High Court, in equally imperative language, to—

“dismiss an election petition which does not comply with the provisions of Section 82”.

20. The respondent cannot by consent, express or tacit waive these provisions or condone a non-compliance with the imperative of Section 82(b). Even inaction, laches or delay on the part of the respondent in pointing out the lethal defect of non-joinder cannot relieve the Court of the statutory obligation cast on it by Section 86. As soon as the non-compliance with Section 82(b) comes or is brought to the notice of the court, no matter in what manner and at what stage, during the pendency of the petition, it is bound to dismiss the petition. In unstinted obedience to the command of Section 86.” (Emphasis supplied).

Section 81 is also covered by the provisions of Section 86 and any non-compliance with the provisions of Section 81 has to result in the dismissal of the Election petition under Section 86 of the Act, no matter at what stage the non-compliance is brought to the notice of the Court.

In *Satya Narain Vs. Dhuja Ram (A.I.R. 1974 S.C. 1105)* it was observed as under :—

“We are, therefore, clearly of opinion that the first part of Section 81(3) with which we are mainly concerned in this appeal is a peremptory provision and total non-compliance with the same will entail dismissal of the election petition under section 86 of the Act.”

In *Sharif-Ud-Din Vs. Abdul Ghani Lone (A.I.R. 1980 S.C. 303)*, the Supreme Court provided as under :—

“It is true that Section 81(3) of the Act is purely procedural in character and that ordinarily procedural law should not be given that primacy by courts as would defeat the ends of justice. But if a law even though it may be procedural in character insists that an act must be done in a particular manner and further provides that certain consequence should follow if the act is not done in that manner, courts have no option but to endorse that law as it is”.

In *M. Karunanidhi Vs. H. V. Handa and others (A.I.R. 1983 S.C. 558)*, *Mithilesh Kumar Pandey Vs. Baij Nath Yadav (A.I.R. 1984 S.C. 305)* and *Rajendra Singh Vs. Smt. Usha Rani and others (A.I.R. 1984 S.C. 956)* the election petitions were dismissed for non-compliance of Section 81(3).

The further objection of Mr. Ramachandran that the applications were not signed by the respondent has also to be rejected as the respondent's counsel has the authority under the “Vakalatnama” read with order 3 C.P.C. to move miscellaneous applications under his own signature.

Another objection as to the maintainability of these applications is that they were not supported by the respondent's affidavit.

Rule 11 of Chapter XV-A of the Rules of court to which my attention has been drawn, itself provides that an application shall “ordinarily” be accompanied by an affidavit. The use of the word “ordinarily” is indicative of the fact that this part of the procedure is not to be treated as mandatory.

I have already pointed out above that the plea of non-compliance of Section 81(3) was first raised by the respon-

dent in *C. M. Application No. 36(E)* of 1990 which was duly supported by his own affidavit.

Non-filing of the affidavit in support of subsequent applications in which the same plea was again raised would not make applications “not maintainable”. Moreover, the observation of the Supreme Court in *Udhav Singh's case (Supra)* that the matter of non-compliance is only to be brought to the notice of the Court, “no matter in what manner and at what stage”, should be treated as conclusive of the controversy.

In view of the above discussion, the objections contained in *C.M. Application No. 112(E)* of 1990 and *C.M. Application No. 114(E)* of 1990 are to be rejected while *Civil Misc. application No. 89(E)* of 1990 and *C.M. Application No. 113(E)* of 1990 for dismissing the election petition for non-compliance of Section 81(3) are to be allowed. Since the present order on these applications decides, the election petition itself, the other applications, namely *C. M. Application No. 7(E)* of 1990, *33(E)* of 1990, *34(E)* of 1990, *36(E)* of 1990, *47(E)* of 1990, *151(E)* of 1990 and *C. M. Application No. 21(E)* of 1991 need not be decided.

The Election Law is technical law. In *N. P. Ponnuswami Vs. Returning Officer Namakkal Constituency (AIR 1952 SC 64)* the Supreme Court stated that the right to vote or the right to contest an election as a candidate is not a civil right but is a creature of statute and must be subject to limitations imposed by it.

In *Jagan Nath Vs. Jaswant Singh (A.I.R. 1954 SC 210)* the Supreme Court pointed out that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the Common Law and that the court possess no common law power.

In *Charan Lal Sahu Vs. Nandkishore Bhatt (AIR 1973 S.C. 2464)* the Supreme Court observed that the right conferred being a statutory right, terms of that statute had to be complied with.

In *Azhar Husain Vs. Rajiv Gandhi (A.I.R. 1986 SC 1253)* the Supreme Court stated as under :—

“.....there is greater reason why in a democratic set up in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the Nation, the controversy is set at rest at the earliest if the facts of the case and the law so warrant. Since the Court has the powers to act at the threshold the power must be exercised at the threshold itself.....”.

The law makers have, wisely, given unto themselves a technical law so that they may not long be involved in litigation. I wish it may dawn upon them to provide simpler procedural law for the common man so that he too gets justice at the earliest.

For the reasons stated above *Civil Misc. Application No. 89(E)* of 1990 and *113(E)* of 1990 are allowed and the Election Petition is dismissed under Section 86 for non-compliance of the provisions of Section 81(3) of the Act. The respondent would be entitled to his costs.

Sd/- S. SAGHIR AHMAD, J.
7-2-1991.

नई दिल्ली, 19 मार्च, 1991

आ. अ. 62.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1990 की निर्वाचन अर्जी सं. 5 में जिसमें 34-बीड संसदीय निर्वाचन-क्षेत्र में लोक सभा के लिए श्री बबनराव दावाजीराव धकाने के निर्वाचन को प्रश्नगत किया, मुंबई उच्च

न्यायालय (औरंगाबाद पीठ) के तारीख 12 दिसंबर, 1990 के निर्णय को इसके द्वारा प्रकाशित करता है।

(निर्णय अंग्रेजी में छापा है)

[सं. 82-महा.लो.स./5/90(औरंगा.)]

अदेश से,

एस.के. पांडे, प्रवर सचिव

New Delhi, the 19th March, 1991

O.N. 62.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment dated 12th December, 1990 of the High Court of Judicature at Bombay (Aurangabad Bench) in Election Petition No. 5 of 1990, calling in question the election of Shri Babanrao Dadajirao Dhakane to the House of the People from 34-Beed Parliamentary constituency.

[No. 82|MT-HP|5|90(Aur)]

By Order,

S. K. PANDEY, Under Secy.

IN THE HIGH COURT OF JUDICATURE
AT BOMBAY BENCH AT AURANGABAD,
ELECTION PETITION NO. 5 of 1990

1. Jagannath Sitaram Sahahne,
2. Harishchandra Gopichand Pawar—

Petitioners.

Versus

1. Chief Electoral Officer, State of Maharashtra, for 34 Beed Parliamentary Constituency, Mantralaya, Bombay.
2. District Election Officer, 34 Beed Parliamentary Constituency,
3. Collector and Returning Officer, 34 Beed Parliamentary Officer, Collector's Office, Beed.
4. Dhakne Babanrao Dadarao.
5. Balbhim Rangnathrao Ghuge,
6. Bander Uttam Bajirao,
7. Munde Sadashiv Sitaram,
8. Rathod Ghansham Mansing.
9. Lalasaheb Madhav Shinde,
10. Kehirsagar Kesharbai Sonajirao.

—Respondents.

Shri K. P. Thigale, with Shri R. M. Boarde, Advocates for the Petitioners.

Shri K. N. Dhuldawaj, A.G.P. for respt. Nos. 1 to 3.

Shri B. N. Bajpai, Adv. for Respt. no. 4.
Shri K. D. Patni, Adv. for Respt. no. 6.
Shri V. D. Salunke, Adv. for Respt. no. 8.
Shri S. V. Chandole, Adv. for Respt. No. 10.
Respondent Nos. 5, 7 and 9 served.

CORAM : A. A. HALBE, J.

12th December, 1990

JUDGMENT :

Having suffered the rejection of nomination of petitioner no. 2 at 34 Beed Parliamentary Constituency at the hands of respondent no. 3 and thus prevented from contesting the said Parliamentary Elections held on 24-11-1989, the petitioners have preferred this Election Petition for declaration that the Parliamentary Elections held for 34 Beed Parliamentary Constituency should be declared void and should accordingly be set aside and that the election of respondent no. 4, who is the returned candidate, should thus be set aside and that fresh elections should be called for.

2. Petitioner no. 1 is the voter in the above Parliamentary Constituency, whereas petitioner no. 2 is also a voter and was serving as Deputy Collector and Land Acquisition Officer at Nanded till 21-10-1989. The contentions of the petitioners are as follows.

Petitioner No. 2 had tendered the resignation of his post on 21-10-1989 and forwarded the same to the concerned Authorities. In the said letter, it was clearly stated that the petitioner no. 2 wanted to resign his post for the purposes of filing nomination paper for the above Beed Parliamentary Constituency. The petitioner no. 2 had also forwarded the cheque for the amount of his one month's salary. He had likewise filed nomination papers in various Constituencies and it is claimed by the petitioners that his nomination paper was accepted by the Returning Officer for the Constituency of Yeotmal. However, his other nomination papers filed in the various regions of Marathwada were rejected on the ground that the petitioner was holding the office of profit under the State Government on the date of the scrutiny of the nominations. It is contended by the petitioners that on submission of the resignation petitioner no. 2 clearly indicated his readiness and willingness to vacate and resign his office and that it should be further held that petitioner no. 2 should be deemed to have resigned from the above post with effect from 21-10-1989. However, the respondent no. 3 the Collector and Returning Officer, Beed, improperly rejected the nomination paper of the petitioner no. 2 and the reason given was that the petitioner no. 2 was holding the office of profit. The said reason is patently illegal and not sustainable. With the tender of resignation letter, the disqualification attached to the petitioner no. 2 for filing the nomination under the Representation of People Act ceased to exist. The same was filed on 21-10-1989 much before the date for filing and the date for scrutiny of the nomination papers. The said resignation was addressed to the Secretary, Revenue and Forest Department, Government of Maharashtra, and the said Officer by his letter dated 9-1-1990, communicated to the petitioner no. 2 that his resignation was accepted with effect from the date of 21-10-1989. This would according to the petitioners, show that petitioner no. 2 had resigned and the same was accepted from 21-10-1989 and hence the rejection of nomination paper is patently illegal. Since the petitioner no. 2 has been deprived of his right to contest the election, the election stands vitiated for improper

and illegal rejection of the nomination paper and hence the petitioners have prayed as above that the said election should be declared as null and void and that the respondent no. 4 should be declared as not returned candidate.

3. This has been stoutly resisted by the respondent no. 4—the Returned candidate, in his written statement and affidavit, respectively, at Exhs. 13 and 14. Briefly stated, the respondent no. 2 has contended that the filing of resignation does not amount to acceptance of resignation and hence the nomination filed by the petitioner no. 2 was correctly rejected since on the date of the scrutiny of the nominations, the petitioner no. 2 was holding the office of profit under the State Government. Simply tendering of resignation does not ipso facto amount to cessation of employment and that it is also contended that petitioner no. 2 had not tendered the cheque for one month's salary. For these reasons, respondent no. 3 rightly rejected the nomination and hence the prayer of the petitioners should not be countenanced and petition should be dismissed with costs. Some other contentions have also been raised by the respondent no. 4, which are not relevant and which have not been pressed by the learned advocate for the respondent no. 4. The question of limitation and jurisdiction has also been decided and the same, therefore, needs no fresh consideration.

4. The respondent no. 3, the Returning Officer, in his written statement at Ex. 16, has also raised the same contentions. According to respondent no. 3 petitioner no. 2 was holding office of profit on the date of nomination as well as on the date of scrutiny. He had not tendered the correct amount of salary cheque and in fact his resignation was accepted on 9-1-1990 long after the elections were over, hence, the petition, according to the respondent no. 3, deserves to be dismissed.

5. The only point, therefore, arises for my consideration is, "Do the petitioners prove that the nomination paper of petition no. 2—Harishchandra Gopichand Pawar, has been wrongly rejected by the Returning Officer". My finding is in the negative.

6. In order to decide the issue under consideration it is necessary to set out broadly the admitted facts.

Petitioner no. 2—Pawar was appointed as Deputy Collector by Government Resolution dated 30-3-1979 at ex. 36. Initially, he is shown to have been appointed as Probationary Deputy Collector and was posted at Pune in that capacity, vide posting order at Ex. 37. It seems that he was posted to other places thereafter and right upto the time he tendered his resignation on 21-10-1989 he was in the cadre of Deputy Collector and at that relevant time he was working as Land Acquisition Officer at Nanded. In order to contest the elections from 34 Beed Parliamentary Constituency he submitted his resignation on 21-10-1989 vide Ex. 'A'. The true translation thereof is annexed to the petition. The said resignation has been addressed to the Secretary, Revenue and Forest Department, Government of Maharashtra Bombay and in the said resignation, it has been unequivocally mentioned by the petitioner—Pawar that he intended to file nomination paper for the Hingoli

Constituency and for that purpose, he was resigning the post of Special Land Acquisition Officer, equivalent to that of Deputy Collector. It may be mentioned that he had also filed the nomination for the Beed Parliamentary Constituency. The said resignation was forwarded by the Collector, Nanded, vide Ex. 47 and in the forwarding letter it is clearly mentioned that petitioner—Pawar had annexed the cheque for Rs. 2071 being one month's pay.

7. On 1st November, 1989, vide Ex. 50, the Section Officer of the Revenue and Forest Department wrote back to petitioner—Pawar that he had not tendered the cheque for the amount equivalent to one month's pay. The said amount has to be paid either by demand draft or by cash, that the amount was inadequate and hence, the resignation could not be processed till these requirements were complied with. It seems that on 1-11-1989, the petitioner—Pawar had approached the Revenue Secretary and insisted upon him to accept his resignation so that he would not miss the date for scrutiny of nomination. He also threatened the Secretary and hence police action had to be taken. This letter is also written by Section Officer of the said Department to the Police Station Officer Azad Maidan Police Station, Bombay. An attempt was made to serve petitioner—Pawar the letter written by the Deputy Secretary, Revenue Department, wherein, Pawar was called upon to pay Rs. 4,000 which would be approximately equivalent to his one Month's pay. Accordingly, on 13-12-89 Pawar forwarded the demand draft for the said amount. On 30-12-1989 vide Ex. 35, Collector, Nanded, intimated to the Secretary, Revenue Department that some amount was outstanding against the petitioner—Pawar toward the rent and that out of the total amount payable to Pawar being Rs. 29050 the arrears of Rs. 16205.50 ps. could be deducted. On 9th January, 1990, vide Ex. 42-A, the resignation of petitioner—Pawar was accepted with effect from 21-10-1989. It is pertinent to observe that this was done sequel to payment of Rs. 4000 by Pawar on 13-12-1989. The notification to that effect was issued vide Ex. 56 on 17-1-1990 and correction Ex. 57 was issued on 23-5-1990.

8. It is also necessary to observe that in the letter of resignation the petitioner—Pawar had clearly intimated that his resignation should be accepted and it would not be therefore, improper to draw an inference that even petitioner—Pawar accepted the position that by tendering the letter of resignation he could not say that he shall be deemed to have resigned. This position is further strengthened according to the respondents, when petitioner—Pawar filed writ petition No. 3563/89, whereby he called upon respondent No. 8—the State to accept his resignation. A writ of mandamus was, therefore, prayed against the State of Maharashtra and also other concerned Officers. This petition is dated 31-10-1989 and the averments therein also clearly indicate that petitioner—Pawar accepted the legal position that resignation was not accepted by the Government. The said petition was subsequently withdrawn.

9. In his deposition at Ex. 28, Pawar has stated he was appointed as a Probationary Deputy Collector for a period of 2 years with effect from 24-5-1979 and that after the successful completion of Probationary period, he continued in the post of temporary Deputy

Collector. He admits that there are no Rules framed for the termination or determination of his services but as per the notifications produced at Exhs. 30 to 37, he was required to surrender one month's pay along with his resignation. He has further deposed that he gave an application for being relieved but Collector asked him to go on leave and accordingly one Bhusari was placed in charge. The relevant charge report is on record and it clearly shows that Bhusari took over the charge of petitioner—Pawar as he had proceeded on leave. Pawar has stated that his resignation was not accepted soon, but his relieving order on 9-1-1990 is vide Ex. 42. He filed the nomination paper with the Returning Officer for Beed Constituency on 27-10-89 vide Ex. 43, but he could not remain present at the time of the scrutiny because on 1-11-1989 he was in the police custody of Azad Maidan Police Station. This happened because he had approached Shri niwasan—Secretary, who refused to accept his resignation and handed him over to the police. He was served with the letter, the copy of which has not been tendered on record, but all the same, it is not disputed that the letter calling upon him to tender the amount of Rs. 4000 was sought to be served on him so as to finalise the processing of resignation letter. In the Writ Petition, he has deposed that he did not ask for the pay scale of the regular post of Deputy Collector. He has stated that he forwarded the demand draft for Rs. 4,000 and received letter Ex. 34 later. He has, however, not admitted that his resignation was accepted only on 9-1-1990 and not earlier. He has also stated that he was not confirmed in his post. Regarding confirmation he has stated that although his probationary period was over long before, he continued in the post and never got any confirmation orders, but he admits that his pay might be in the neighbourhood of Rs. 4400. He has also stated that when he forwarded the cheque of Rs. 2071 he had not put the date thereon. He further admits the exchange of correspondence, which is referred above. He has lastly stated that his nomination paper at Yeotmal was accepted by the Returning Officer and that he had got about 6 to 7 hundred votes. It is in the background of these documents and evidence that the question of improper rejection of nomination shall have to be examined.

10. Before dwelling on the legal submissions made by the parties, the important admission on behalf of the petitioner shall have to be borne in mind. The petitioner has admitted that so far as Rules relating to resignation from Government service are concerned, his case is wholly governed by Ex. 58, which is the Government Circular No. SRV. 1077/XII, dated 20th May, 1977. [The prior Circulars get merged into this Circular Ex. 58. This Circular has been issued under the orders of and in the name of Governor of Maharashtra and it has been rightly suggested that it is more or less a Statutory Circular. Obviously, therefore, the conditions and stipulations mentioned therein are binding on the petitioner.

11. With the above set of facts in background, the petitioners have come forth with a case that the nomination of Pawar has been wrongfully rejected under section 100 (1) (c) of the Representation of People Act and that the election should be set aside. It is not disputed that the respondent No. 4 has been a Returned candidate.

12. The learned advocate for the petitioners has tried to canvass that although the rules regarding resignation are contained in Ex. 58, which is the Circular of 20th May, 1977, the facts in this case present a different picture and it should be held that the petitioner—Pawar was relieved from the service before the scrutiny of the nominations. His nomination has been wrongly rejected by the Returning Officer on the ground that he was holding the Office of Profit on the date of scrutiny of the nominations. The Elections were admittedly declared on 17th October, 1989, the date of filing nomination papers was from 23rd October, 1989 to 31st October, 1989, the date of scrutiny was fixed on 1-11-1989 and the date of withdrawal of the nomination was 3-11-1989 and the actual elections were held on 24-11-1989 and the results of which were declared on 27-11-1989.

13. Now, going back to the facts canvassed on behalf of the petitioners, it is stated that the resignation was submitted by the petitioner—Pawar on 21-10-1989 and the same was admittedly received in Revenue and Forest Department, Mantralaya, Bombay, on 27-10-1989 and this fact is well borne out from the letter Ex. 49, which has been produced by the State. In that letter, it is stated that the resignation submitted by the petitioner—Pawar was received on 27-10-1989 and the same was being processed. It is also contended that even the cheque for Rs. 2071 was also enclosed along with the resignation and the same is also admitted by the respondents vide letter Ex. 50 dated 1-11-1989. Likewise, the charge report was signed by the petitioner—Pawar on 21-10-1989 and the same is produced at Ex. 39. It is also not disputed that petitioner—Pawar was not paid any salary after the date of his resignation and hence it has been vehemently urged by the learned advocate for the petitioners that these are the facts which coincide with their contention that the petitioner had effectively resigned on 21-10-1989 and that the same was accepted with effect from 21-10-89, looking to the circumstances narrated above. Alternatively it is contended that the receipt of resignation on 27-10-1989 should be deemed to be the date on which the resignation has been accepted and in this background petitioner—Pawar had a right to file nomination paper which is dated 27-10-1989 in the Beed Constituency. His nomination was thus perfectly valid on the date of scrutiny i.e. 3-11-1989 and hence his rejection is obviously illegal and not tenable in law.

14. Regarding Ex. 58, which is a Circular dated 20th May, 1977, it has been urged on behalf of the petitioners that although as per clause (4) of the Circular resignation became effective from the date of its acceptance communicated to the petitioner No. 2 Pawar on 9-1-1990. The same was held to be effective from the date 21-10-1990. It is further canvassed on behalf of the petitioners that clauses 7, 8 and 9 should be taken into consideration and if those clauses are scrutinized in detail, the requirements therein have been sufficiently complied with by the petitioner—Pawar and the petitioner was therefore, entitled to file his candidature. It may be stated that these arguments are based on the case law, to which the reference would be made later. It is also attempted to show that the circumstances narrated above establish the proper relief of the petitioner and the proper acceptance of resignation submitted by the

petitioner—Pawar before the date of scrutiny of the nominations on 1-11-1989.

15. Clause 7 of the above Circular provides that “it is legally unobjectionable to make unilateral stipulation that a temporary employee should give one month’s notice for resigning his appointment or forfeit one month’s Pay in lieu of notice.....”. From his clause 7, a case is made out by the petitioner—Pawar that he had submitted cheque of one month’s pay of Rs. 2071 and in terms of this clause he had submitted his resignation properly. Clause 8 also elucidates the same proposition and it reads as follows :

“It is also legally feasible to recover one month’s pay from a temporary employee, who tenders his resignation without giving the reasonable notice.”

Clause 9 defines the pay which is not to include other allowances payable. These clauses lend assistance to the case of the petitioner—Pawar, according to the learned advocate for the petitioner.

16. Recalling back the admitted facts, the resignation was accompanied by the cheque of Rs. 2071, that the letter was received on 27-10-1989 by the concerned and these are the strong circumstances, which, according to the petitioners, establish that the resignation was properly submitted. As indicated petitioner—Pawar did not receive any salary and he handed over the charge on the date of his resigning. The overall impact, according to the petitioners, is that the resignation was properly submitted in terms of the conditions stipulated above in Ex. 58 and there was absolutely no justification to reject the same. The petitioner, therefore, claimed relief of declaring the election as null and void.

17. This is indeed opposed by the respondents more particularly respondent no. 4 and respondent nos. 1 to 3. According to them, the above conditions prescribe only the mode of tendering resignation. However, the fundamental position contained in Clause 4 has not been superceded by the Clauses 7, 8 and 9 of Ex. 58. In fact, resignation was accepted on 9-1-1990 and gazetted on 16-1-1990. In that light of the circumstances, the nomination filed by the petitioner—Pawar has not been wrongfully rejected, as on the date of the scrutiny petitioner—Pawar was holding office of profit.

18. Before probing into this aspect, it may not be out of place to mention undisputed position about the Government service. The nature of Government service has been elaborated in detail in the case of *Roshan Lal Tandon v. Union of India*, reported in (1968) 1 S.C.R. 185, as under.

“It is true that the origin of Government service is contractual. There is an offer and acceptance in every case, but once appointed to his post or office, the Government servant acquires a status and his rights and obligations are no longer determined by the consent of both parties, but by statute or statutory rules which may

be framed and altered unilaterally by the Government. In other words, the legal position of the Govt. service is more one of the status than of contract. The hall mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emoluments of the Government servant and his terms of service are governed by statute and statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Art. 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Art. 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something is in the nature of status. It is much more a purely contractual relationship upon the power of removal granted to the President and the Governor under Art. 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in enforcement of these duties society has an interest. In the language of jurisprudence status is a condition of membership of a group of which power and duties are exclusively determined by law and not by agreement between the parties concerned.

19. The learned advocate for the petitioners has drawn my attention to AIR 1987 Supreme Court 1293, in the case of *Sitaram Jivabhai Gavali v. Ramjibhai Potivabhai Mahala and others*. According to him, the facts of that case are practically on all four with the facts of this case and hence the ratio laid down in this Ruling should be pressed into service in upholding the petitioner’s contention. The facts briefly stated were as follows.

The appellant was appointed as an Investigator in the Office of Development and Planning Office as a temporary Government servant. He decided to contest Lok Sabha election. His appointment was subject to the conditions mentioned in the order of appointment, and amongst the said conditions, one was that before resigning the post he had to give one month’s notice to the Administration, failing which he had to remit one month’s pay. He, therefore, submitted his resignation one week before the date for filing the nomination. It was stated in the resignation letter that it will take effect immediately. The appellant also enclosed the cheque of one month’s pay which included all the allowances admissible to him. The letter of resignation was stated to have been submitted under Rule 5(1)(c) of Central Civil Services Temporary Services Rules. He

also handed over the charge of office. He submitted the record in his possession to his Head Office. He, therefore, filed nomination on the assumption that he was relieved from his charge. The same was contested on behalf of the Government. It was contended on behalf of Government that under the above Rule, the notice of one month was to be given and there was no provision of surrender of one month's pay in the above Rules. Accordingly, the resignation came into effect one month after its submission, by which time both the dates for nomination as well as scrutiny were over and hence, the nomination was improperly accepted. The Supreme Court upheld the contention of appellant that his resignation was accepted pointing out the following circumstances: (i) the as per the terms of appointment, the petitioner was to surrender one month's pay along with the letter of his resignation; (ii) he had also handed over all the files, records, registers, etc. to the Collector, who accepted the same; (iii) that there was no refusal on the part of the Collector to accept the record; (iv) that the appellant was not called upon to attend the office even after the resignation; (v) the appellant was not paid any amount of salary after the date of his resignation and in these circumstances, the Court held that the appellant was entitled to file the nomination. The learned advocate for the petitioners has contended that all these circumstances conspicuously figure in the episode of his resignation.

20. However, this can be repelled by drawing attention to the following facts. In the first instance, Petitioner—Pawar did not surrender one month's pay, which was in the neighbourhood of Rs. 4,000. In this aspect, I shall come later, but suffice it to say at this stage that on the admission even by petitioner—Pawar in his evidence his pay was not less than Rs. 4,000. Secondly petitioner—Pawar did not hand over record, registers, etc. Petitioner—Pawar proceeded on leave by signing the charge report in favour of other Officer-Bhusari. Further, the petitioner was clearly given to understand that his resignation could not be accepted. In terms of letter, at Ex. 50, another letter dated 12th November, 1990 being APT. 1189/6673[E-1, sent by the Deputy Secretary, Revenue and Forest Department, the petitioner has also not received the letter of acceptance of his resignation. At this stage, it would also be proper to consider the argument on behalf of the petitioner that clauses, 7, 8 and 9 should be construed in his favour. As indicated, clauses 7, 8 and 9 on Ex. 58 Circular, clearly provide for the modes of submitting resignation and it is that one month(s) salary has to be surrendered. Now, so far as the salary is concerned, in his evidence at Ex. 28, Pawar has deposed at that time he was drawing the salary only of Rs. 2071 per month, for which the pay slip has been produced on record at Ex. 40. It is indeed true that the payments were made to Pawar at that rate, but this pay was drawn while Pawar was under suspension. In this regard, one admission of petitioner—Pawar needs attention and the same is that Pawar succeeded in thwarting service of order of suspension by filing the Writ Petition. He has clearly admitted that the suspension order was not served on him and hence, it shall be deemed to

be a fact that the petitioner was entitled to full pay and not at the rates while under suspension. Now, in the above Circular Ex. 58, it is clearly provided that Persons resigning has surrender one month's pay. If Pawar was not under suspension, he was liable to pay the full month's salary and this is indicated in the letter Ex. 50 and the above letter dated 12th November, 1989 and the final order dated 9-1-1990 vide Ex. 42-A. Even the petitioner—Pawar has not been able to dispute this position. He has made a grievance that he was paid at the above rate i.e. Rs. 2071 per month, which is a rate payable while under suspension. He has not succeeded in obtaining the pay slip for the full pay, but I am afraid that such a contention would not prevail in case of Government servant. When Pawar decided to resign he was under obligation to surrender one month's full salary, which he did not in this case, here was thus a breach on the part of Pawar, to comply with the requirements even in terms of clause, 7, 8 and 9.

21. Reverting back to Ex. 58, the argument on behalf of the petitioner is that clauses 7, 8 and 9 were duly complied with and that they provided for the modes of resignation. However, the wording of clauses 7, 8 and 9 do not at all show that clause 4 which is the foundation of the effective resignation, is superseded. Stated briefly, under clause 4 resignation becomes effective only from the date of its acceptance and that too from the date it is communicated to the person resigning. In this light of the matter, the above ratio of the Supreme Court in Gaval's case cannot be of any assistance to the petitioner.

22. The learned advocate for the petitioner has drawn my attention to (1983) 3 Supreme Court Cases Pg. 373, in the case of Ram Swarup V. Hari Ram and Ors. He has urged that as soon as the resignation and one month's pay was surrendered the Court upheld the resignation. However, on going through the facts of the case, it would be crystal clear that the resignation was accepted with the direction to the person resigning that he should surrender one month's pay. In this case, there is no communication about the acceptance of resignation and hence even this cannot come to the rescue of the petitioner.

23. The petitioner has also relied on AIR 1970 Supreme Court 1494, in the case of V. P. Gindromiya V. State of Madhya Pradesh. In that case, Naib Tahsildar on probation was sought to be proceeded with under the departmental enquiry during probationary period. Before the order could be served on him about the disciplinary enquiry, he submitted his resignation with a statement contained therein that the State should deduct one month's pay from the total dues in his favour. The Court upheld, this resignation. The learned advocate for the petitioner has, therefore, urged that the ratio contained in this Ruling is that the date of the communication of resignation is held to be the date of coming into effect of the resignation. This view, therefore, clearly supports the case of the petitioner. However, on going through the above citation, the Court distinctly relied on Rule 12 in relation to temporary Government service Rule 12 was to the effect that the appointee who is a temporary Government servant could resign at any time by giving notice in writing along with the pay for the period of the notice. Relying on this view, the Court held that this was the proper way of submitting resign-

nation and acceptance thereof. However, the facts of this case are in no way identical with the facts in the present election petition. In the first instance, it is nowhere the contention of the petitioner that he is an employee under probation or that he is strictly a temporary Government servant. The admitted facts are that he was employed in the year 1973 under the Government orders as Deputy Collector. On successful completion of the probationary period he was continued to the service. For last 10 years he is in service in that cadre. Merely because no confirmation orders have been served on him, it cannot be said that he is a temporary Government servant. Nowhere in this petition as well as in the writ petition Ex. 60, he has stated that he is a temporary Government servant. In that Right of the matter, the ratio of the Supreme Court in the above case cannot be attracted. The Rule 12 relied upon by the Supreme Court is nowhere to be found in Ex. 58 and hence the petitioner cannot seek reliance on this ratio. The petitioner has also relied on AIR 1975 Supreme Court 2299, in the case of Smt. Indira Nehru Gandhi v. Raj Narain. He has also drawn my attention to the amended section 123 (7) and explanation 3 of the Representation of People Act. It may be stated that this amendment was effected sequel to the above case, decided in the High Court of Allahabad. Now, as per that explanation the publication of the notification about the resignation shall be deemed to be a conclusive proof of resignation and if the date is mentioned about the effective resignation, the same shall be deemed to be from that date. Relying on this amendment and relying on the above ratio, it is vehemently canvassed on behalf of the petitioners that although the notification was issued on 16-1-90, the resignation was accepted under Ex. 42 with effect from 21-10-1989. It is clearly mentioned that the resignation was to be effective on 21-10-1989. Hence, the rejection of nomination of the petitioner—Pawar is clearly not sustainable.

24. Now, in the first instance, the facts in Indira Nehru Gandhi's case are altogether different. In that case, the services of the Government servant were sought to be utilized and that was treated as a corrupt practice. The Government servant had resigned on 14-1-1971, whereas the notification about the acceptance was issued on 25-1-1971. In this case, it would be manifestly clear that the first notification which could conclusively establish the acceptance of resignation was issued on 16-1-1990, long after the elections were over. The very foundation for challenging the election is found wanting in this case. If the notification about acceptance of resignation is published long after the elections were over, it cannot be said that merely because the resignation was to be accepted retrospectively the entire election should be set at naught. That can hardly be the possible interpretation, which can be advanced on behalf of the petitioners. When this fact was pointed out to the learned advocate for the petitioners, he could not suggest any alternative argument to accept the above ratio. As stated, the letter of acceptance of resignation was issued on 9-1-1990, whereas the election was held on 21-11-1989. Hence, the ratio enunciated in the above case can hardly be of any help to the petitioner. It would be thus found that the case law relied upon by the petitioners really does not help the cause of the petitioners.

25. On the other hand, there is a case law, which supports the case of the Respondents. In AIR 1969 Supreme Court 180, in the case of Raj Kumar v. Union of India, the Supreme Court clearly observed that termination of employment in case of a person who invites by his letter of resignation takes effect only after the resignation is accepted. To put it succinctly in the words of the Supreme Court, "But where a public servant has invited by his letter of resignation termination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority, and in absence of any law or rule governing the conditions of his services to the contrary it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority". The same view has been reiterated in AIR 1972 Supreme Court 1302 in the case of Raj Narain v. Indira Nehru Gandhi, wherein the Supreme Court briefly observed that the services of Government servant normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority. Unless there is any law or statutory rule governing the conditions of service to the contrary. In this case Ex. 58 is the only Circular which governs the resignation and the same provides in clause 4 that the resignation shall be effective on the date on which the acceptance of resignation is communicated to the employee namely, the petitioner No. 2 in this case.

26. In AIR 1971 Supreme Court 694, in the case of Union of India v. Gopal Chandra Misra, the Supreme Court laid down what is meant by resignation :

" 'Resignation' in the Dictionary sense, means the Spontaneous relinquishment of one's own right. This is conveyed by the maxim : Resignation est juris proprii Spontanea refutatio (See Earl Jowitt's Dictionary of English law). In relation to an office, it connotes the act of giving up or relinquishing the office. To 'relinquish an office' means to 'cease to hold' the office, or to 'loose hold of' the office (of Shorter Oxford Dictionary); and to 'loose hold of office', implies to 'detach', 'unfasten', 'undo or untie the binding knot or link', which holds one to the office and the obligations and privileges that go with it. In the general juristic sense, also the meaning of 'resigning office' is not different. There also, as a rule, both, the intention to give up or relinquish the office and the concomitant act of its relinquishment, are necessary to constitute a complete and operative resignation (see e.g. American jurisprudence, 2nd edition, volume 15A, page 80) although the act of relinquishment may take different form or assumes a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. Thus resigning office necessarily involves relinquishment of the office, which implies cessation or termination of, or cutting as under from the office. Indeed, the completion of resignation and the vacation of the office, are the casual and effectual aspect of one and the same event. From the above, dissertation, it emerges that a complete and effective act of re-

signing office is one which severs the link of the resigner with his office and terminate its tenure." (underlining is mine).

The analysis of resignation clearly shows that it is not a unilateral process. The resignation has to be accepted by the employer and the same can be provided expressly or can be proved by the conduct. In some cases, as indicated, acceptance has been proved by the conduct, but as stated above, the rules under which the petitioner Pawar is governed are rules which are contained in Ex. 58 and unless they are complied with it cannot be suggested or even accepted that resignation should be deemed to be accepted. There is nothing like unilateral resignation under Ex. 58. The Supreme Court in the above Ruling of Union of India v. Gopal Chandra Mira case observed :

"The General principle regarding resignation is that in the absence of a legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective and it becomes effective when it operates to terminate the employment or the office tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of that Government servant or functionary who cannot, under the conditions of his service or office, by his own unilateral act of tendering resignation, give up his service or office normally, the tender of resignation becomes effective and his service or office tenure terminated, when it is accepted by the competent authority."

The ratio laid down by the Supreme Court thus can be deduced in following words. The resignation is effective from the date of its acceptance unless there are terms and conditions contrary to that effect. Clause 4 of Ex. 58 in this case governs the relationship between the State Government and petitioner-Pawar. Merely because Pawar surrendered the pay the resignation cannot be deemed to have come into effect.

27. Now, going back to the facts of this case, it would be apparent that even Pawar himself was aware that his resignation could be effective only after the acceptance and that is what is worded in his letter of resignation. When the Government called upon him to surrender one month's pay around Rs. 4,000/- and when Pawar complied with it by sending the draft filed Ex. 54 on 13-12-1989, he cannot be heard to say that his resignation should be deemed to have been accepted with effect from 21-10-1989 or at least by 27-10-1989, the date on which the communication was received in Mantralaya. A feeble attempt has been made to suggest that in all these letters, even the Government itself was not aware as to what was the pay payable to petitioner-Pawar, but since petitioner-Pawar has clearly admitted that his pay was around Rs. 4,000/- per month, obviously in view of the revision in pay scales by no stretch of imagination, it can be said that he was

only liable to surrender only pay, which was payable to him under suspension and hence, on that count also his case cannot be entertained.

28. The net position, which emerges from the above discussion is that the petitioner-Pawar submitted his resignation on 21-10-1989. He submitted an undated cheque, which is again a circumstance, which goes against him. The cheque was undated, it was, therefore, an incomplete instrument. The State did not exercise the option of filling in the date. The amount was not equal to one month's salary. Pawar paid the amount subsequently on 13-12-1989 and the resignation was finally accepted on 9-1-1990 and notified on 16-1-1990. In the light of the overwhelming evidence against the petitioner, the election petition has to be dismissed with costs.

ORDER

The petition is dismissed. The petitioner to pay costs to Respondent No. 4—costs quantified at Rs. 2000/-. The costs should be paid out of the security deposit made by the petitioners. The intimation be sent forthwith to the Speaker of Lok Sabha and also to the Election Commission under section 103 of the Representation of People Act. Likewise, the authenticated copy of the judgment be forwarded to the Election Commission.

Sd/-

A. A. HALBE, J.

नई दिल्ली, 20 मार्च, 1991

आ. अ. 63.—लोक प्रतिनिधित्व अधिनियम, 1950 की धारा 13क की उप-धारा (1) और (2) के अनुसरण में, निर्वाचन आयोग निदेश देता है कि उसकी तारीख 3-1-1991 की अधिसूचना सं. 508/असम/90 में निम्नलिखित संशोधन किए जाएंगे, अर्थात् :—

उक्त अधिसूचना में संलग्न सारणी के :

(क) स्तम्भ 3 में, क्र. सं. 12(क) उपायुक्त, बारपेटा के सामने, विद्यमान प्रविष्टियों के स्थान पर "40-सारे भोग, 43-बारपेटा, 44-जनिया, 45-बाधवर, 46-सोम्बेली और 47-बेंगा विधान सभा निर्वाचन क्षेत्र" प्रविष्टियां रखी जाएंगी।

(ख) स्तम्भ 3 में, क्र. सं. 12(ख) उप-प्रभागीय अधिकारी बाजली के सामने, विद्यमान प्रविष्टियों के स्थान पर, "41-भवानीपुर और 42-पाटाचार कुची विधान सभा निर्वाचन-क्षेत्र, प्रविष्टियां रखी जाएंगी।

[सं. 508/असम/90]

आदेश से,
एस. डी. प्रसाद, सचिव

New Delhi, the 20th March, 1991

O.N. 63.—In pursuance of sub-sections (1) and (2) of Section 13AA of the Representation of the People Act, 1950 (43 of 1950), the Election Commission hereby directs that the following amendments shall be made in its notification No. 508/AS/90 dated 3-1-1991, namely :—

In the Table appended to the said notification—

- (a) “In column 3 against Sl. No. 12(a)-Deputy Commissioner, Barpeta, for the existing entries the entries “40-Sorbhog, 43-Barpeta, 44-Jania, 45-Baghbar, 46-Sorukhetri and 47-Chenga Assembly constituencies” shall be substituted;
- (b) In column 3 “against Sl. No. 12(b) Sub-Divisional Officer, Bajali, for the existing entries, the entries “41-Bhabanipur and 42-Patacharkuchi assembly constituencies” shall be substituted.

[No. 508/AS/90]

By Order,
S. D. PERSHAD, Secy.

शुद्धि-पत्र

नई दिल्ली, 21 मार्च, 1991

आ.अ. 64.—आयोग की तारीख 8 मार्च, 1991 को अधिसूचना सं. 154 ज.क./91 में, पंक्ति पांच और पंक्ति छ में, “आयुक्त और सचिव, अद्योग और वाणिज्य” शब्दों के स्थान पर “आयुक्त और सचिव, स्वास्थ्य और चिकित्सा शिक्षा” शब्द रखे जाएंगे।

[सं. 154 ज.क. 91]

आदेश से,
के. पी. जी. कुट्टी, सचिव

CORRIGENDUM

New Delhi, the 21st March, 1991

O.N. 64.—In Commission's notification No. 154/JK/91 dated 8th March, 1991, in lines five and six for the words “Commissioner and Secretary Industries and Commerce”, the words “Commissioner and Secretary, Health and Medical Education” may be substituted.

[No. 154/JK/91]

By Order,
K. P. G. KUTTY, Secy.